HAZARDOUS WASTE CONTAMINATION OF WATER RESOURCES

(Superfund Clean-up Policy and the Seymour Recycling Case)

(98-78)

HEARING

BEFORE THE

SUBCOMMITTEE ON
INVESTIGATIONS AND OVERSIGHT

OF THE

COMMITTEE ON
PUBLIC WORKS AND TRANSPORTATION
HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

FIRST SESSION

DECEMBER 20, 1983

WITNESSES: U.S. ENVIRONMENTAL PROTECTION AGENCY;
U.S. DEPARTMENT OF JUSTICE

Printed for the use of the
Committee on Public Works and Transportation

U.S. GOVERNMENT PRINTING OFFICE
42-592-O WASHINGTON : 1985

H641-29

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HAZARDOUS WASTE CONTAMINATION OF WATER RESOURCES

Superfund Clean-up Policy and the Seymour Recycling Case

TUESDAY, DECEMBER 20, 1983

House of Representatives,
Committee on Public Works and Transportation,
Subcommittee on Investigations and Oversight,
Washington, DC.

The subcommittee met, pursuant to call, at 10 a.m., in room 2167, Rayburn House Office Building, Hon. Elliott H. Levitas (chairman of the subcommittee) presiding.

Mr. Levitas. The subcommittee will please come to order.

This morning the Subcommittee on Investigations and Oversight continues its examination of the contamination of our Nation's water resources by toxic chemical waste and of the U.S. Environmental Protection Agency's efforts to carry out the 1980 Superfund law for cleaning up abandoned hazardous wastesites.

The purpose of these hearings is to learn from the past so that these mistakes do not occur again. The subcommittee has been studying the Seymour, IN, wastesite as a prime example that involves most of the features of a hazardous wastesite's problems and what can go wrong.

Our hearing today follows 2 days of testimony last week during which we heard about the problems that stem from the dramatic growth of stockpiled toxic waste at the Seymour Recycling Corp. site in Seymour, IN, a site which appears to have been illegally transformed from a recycling operation into a hazardous waste dump.

We heard from the president of the Seymour League of Women Voters who told us about the problems that she and other citizens had encountered in obtaining help from local and State officials, some of whom initially sought to minimize the problem and the public health hazards posed by the site, a site which was the most serious site in Indiana.

We also heard about the efforts and the lack of success that some Indiana State regulatory officials had with their attempts to induce the owners of Seymour Recycling site to clean up the tens of thousands of drums that were rusting and leaking their toxic contents into nearby surface waters and into the ground polluting the ground water, a source of drinking water for some nearby homes.

We learned that Indiana laws were probably inadequate at that time, and that the State was unable, or more accurately, unwilling to provide the funds for the State matching requirement to qualify this site for Superfund treatment.

We learned how the site was abandoned by its operator in early 1980, stripped of its few valuable assets, leaving the State court appointed receiver with no reasonable means for cleaning up the site despite what I would term his valiant effort to do so, an effort obviously doomed to failure given the circumstances.

We also learned that the last operator of the site was the owner of a hazardous wastesite in Ohio known as Chem-Dyne which also had been the subject of EPA attention and we learned that hazardous waste had been shuffled between these two sites.

Some of the testimony suggested that the Federal Government, having let this case languish for more than 2 years, suddenly began to rush to a settlement in mid-1982, an effort that appears to have been motivated more by a desire to produce some sort of result prior to an election than a desire to ensure the protection of the public's health and the environment and the Superfund.

I want to reemphasize that our purpose in this inquiry is to get at facts and not innuendo. Indeed, one objective is to develop a clear, and concise, and complete record of information from all those involved so that we may proceed on the basis of information that reflects as accurately as possible what actually took place and the reasons why.

I can assure you that before these hearings are concluded, we will have developed such a record.

We want to learn many more things about Seymour. Why did the case languish so long only to be pushed with the frenzy in mid-1982. Perhaps then the subcommittee can reach a determination as to why the resources that were so sorely needed were only forthcoming after decisions had been made to obtain an agreement with the potentially responsible parties rather than before.

We would like some explanation why the Federal Government, even after it managed to settle with a substantial number of parties involved in this case, was unable to proceed with litigation against the remaining nonsettlers for almost another year. Was it mere coincidence that a few days before this series of hearings began the Justice Department sued 50 more responsible parties even as 1 of them was moving close to an arrangement that would supply water to a nearby community?

We need to be fully informed why the Federal Government elected to settle with some two dozen companies in October 1982 for $7.7 million giving them a full release from further liability. That amount was about half of that which was offered to others and the deal was described in EPA documents as a sweetheart deal.

Why did the terms of the settlement relieving contingent liability disregard the uniform advice of the Environmental Protection Agency and Department of Justice professional personnel?

How did Chemical Waste Management get involved?

What was the role of James Sanderson, a sometime EPA consultant nominated for Assistant Administrator's position, a friend of Ann Gorsuch and an employee of Chemical Waste Management?

Who was behind the decisions of a political nature and how high did they go?

Can another Seymour occur and could another Seymour-type settlement be reached?

Beyond the answers to those questionable decisions, it is important that the subcommittee learn what assurances there are that there will be sufficient funds available to complete and fully address the ground water problems.

And of concern to this subcommittee is the prospect that in forgoing more than $7 million in the initial October 26, 1982, settlement, the U.S. Environmental Protection Agency and the Department of Justice may have also traded away the resources necessary to completely and quickly clean up the chemical waste contaminants in the soil and ground water at Seymour, IN.

Was this settlement made to demonstrate that Superfund did not have to be extended in order to deal with toxic waste cleanup?

I expect that these and many other questions that I have will be answered at least in part by our witnesses today who are, except for one former EPA employee, from the U.S. Environmental Protection Agency and the U.S. Department of Justice.

I expect that these hearings today, before we are finished with them, may be some of the most crucial and critical in not only unravelling what has happened in the past, but finding out why and whether it could happen again.

It is the intention of the chair to proceed until approximately 12 or 12:30, take a short luncheon break, resume and then complete all of the testimony today. I think I have mentioned this to Mr. Lucero earlier and I think it will serve the interest of all concerned.

Before calling on the first panel of witnesses, I would like to find out if my colleague, Mr. Molinari, has an opening statement.

Mr. **Molinari**. Thank you, Mr. Chairman.

Mr. Chairman, I am going to request that we swear in all other EPA employees here today that are not at the table if they testify before us.

I share your concerns, Mr. Chairman. Seymour is a case that has received a great deal of notoriety and we have opposing views as to whether or not it was a good settlement for the Government according to various Government documents.

Indeed, even in the pretrial testimony, we have somewhat differing testimony between that which has been furnished by EPA and that which the Department of Justice has submitted to us.

I have a number of concerns that I would like to just briefly mention at the outset. I am very much concerned, as I mentioned last week, about the role in this case of Waste Management Inc., and Chemical Waste Management, a subsidiary corporation.

I am puzzled as to why Waste Management, Inc., purchased Waste Resources of Tennessee, a bankrupt corporation which transported waste to the Seymour site, and then shortly thereafter entered into the so-called TOPOL group settlement which forced them to put up the minimum sum of $100,000 in order to participate.

Where did that $100,000 come from? I hope that somebody can give us the answer to that question. Certainly there were many questions raised before EPA entered into the cleanup contract with Chem Waste as to the problems that they had before that date.

There was apparently a cloud over the role of Mr. Sanderson. I can recall reading internal notes from some members of EPA to others which suggested that if there were any meetings held and Sanderson was present, you were better off absenting yourself and coming up with some excuse.

We had an incident where a truck hauling crushed drums struck a bridge. That incident revealed that there were large quantities of chemicals which were analyzed and found to contain very high levels of some contaminants. The incident also revealed the fact that they were bringing the crushed drums to a site that was not an agreed-upon site in the consent decree that was entered into in court.

So one would have to ask themselves why. If that accident had not occurred, would we know today that Chem Waste was taking some of the material from the site and disposing of it in areas that were not listed as one of the six disposal sites agreed to in advance.

The other questions that I would like to ask and I throw it out to you rhetorically so you can think about it and that is the reports that came out in the last week or so indicating that both the United States as well as many of the States have lost their right to file against some of the toxic waste dumpers because the statute of limitations have run.

If you read the newspaper accounts, everybody is pointing a finger at everybody else. EPA is saying that it was the Justice Department's fault and Justice is saying it is EPA's fault. I don't know whose fault it is, but obviously if there was fault it was somebody's and we would like to know whose.

I want to conclude by saying this to those of you who will be testifying today. Seymour is perhaps a classic out of the many cases that we are going to be looking at in the future. All of you that are here today from EPA will be testifying under oath and I am going to ask you what I would like in advance. I want you to tell this subcommittee on the record what you know about Mr. Sanderson, what concerns about Mr. Sanderson you expressed or you heard expressed by others in your presence.

Mr. Sanderson was a consultant and after the period of his consulting was over, for whatever reason, he seemed to have open access to EPA's doors and was in and out of there constantly.

Mr. Sanderson was apparently one of those who argued long and hard for relaxation of the interim status dump ruling that was suddenly made in, I think it was early 1982, without any notice to anyone except for those that had barrels of chemical waste to be disposed of.

I know I was one of those who testified at EPA and questioned why the order was put into effect immediately although there was a comment period. As soon as the order was signed the disposers were permitted to start carting the drums away.

Now, there are indications that Mr. Sanderson again played some role in convincing those that made the decision to relax the ruling that it should be put into effect immediately. Thousands and thousands of barrels were carried away within the first 48 hours before we had a chance to express our outrage and to ask that the public be heard before the ruling was implemented.

So there are a lot of questions that have been unanswered to this point. We look forward to a long day today. We are going to conclude today no matter how long it takes and I don't want anyone to leave here today without giving us the knowledge that they have of Mr. Sanderson, his corporations, and his role in EPA.

This is something, Mr. Chairman, that I am going to insist upon. I would like to emphasize, not by way of scaring the witnesses, but emphasize that this is your opportunity to put it on the record.

If you are here today and you are testifying under oath and you do not give us the knowledge that you possess, then obviously you are running a risk that you should know before time.

With that, I look forward to an informative day and I hope that some of these important questions can be answered. Thank you, Mr. Chairman.

Mr. **Levitas.** Thank you, Mr. Molinari.

Let me make this announcement. We will be referring and quoting from time to time from documents which were obtained as a result of the subpoena that was originally issued. Included among those documents will be some of what were previously called enforcement sensitive documents.

They will all be made a part of the record and I understand, Mr. Lucero, that you have copies of those documents. These are the documents we obtained under an agreement with the White House and the Justice Department. We have reviewed these documents, and just prior to the hearings today, we advised the Justice Department of which documents we intended to disclose, and we have agreed upon the ones we will be using. So if there is any question as to reference, please let me know and we will provide you with the correct reference.

In addition to that, let me just follow up with something that Mr. Molinari said. We have very carefully reviewed the materials available to us and the reports of staff interviews.

I want to admonish everybody here today who will be testifying and I expect it will be people beyond those who are presently at the table that this is an occasion for candor and for openness. It is not a time for game playing or cleverness and we are looking forward to a very open and forthcoming amount of testimony today.

If there is something that relates to these issues that we will be getting into that is within the knowledge of those of you who are going to be testifying, I cannot urge you strongly enough to be forthcoming before this subcommittee today.

Having said those words of introduction, I understand Mr. Wise does not have an opening statement to make. We will get on with it.

Now, we have got the Department of Justice and EPA both at the table at the same time and I understand that Mr. Lucero and Mr. Ramsey, you will each have an opening statement to make—I am sorry. Ms. Walker has an opening statement.

Then I think we will hear both of those statements. First, Mr. Lucero's and then Ms. Walker's, and then we will get into questioning of the panel.

If the individuals at the witness table and Michael Brown could each raise your right hand.

[Witnesses sworn.]

Mr. LEVITAS. Thank you very much.

Mr. Lucero, I will first recognize you and I will ask you if you will identify for the record the names and positions of other individuals from the Environmental Protection Agency who are here today.

TESTIMONY OF GENE A. LUCERO, DIRECTOR, OFFICE OF WASTE PROGRAMS ENFORCEMENT, U.S. ENVIRONMENTAL PROTECTION AGENCY, ACCOMPANIED BY MITCHELL E. BURACK, ATTORNEY-ADVISER, OFFICE OF LEGAL ENFORCEMENT COUNSEL—WASTE; LARRY KYTE, ASSISTANT REGIONAL COUNSEL, REGION V; PAMELA REKAR, ASSISTANT REGIONAL COUNSEL, REGION V; FRANK BIROS, ACTING DIRECTOR, TECHNICAL DIVISION, OFFICE OF WASTE PROGRAMS ENFORCEMENT; BEVERLY KUSH, SUPERVISORY ENVIRONMENTAL ENGINEER FOR REMEDIAL RESPONSE BRANCH, WASTE MANAGEMENT DIVISION; AND MICHAEL A. BROWN, ESQ., SCHEMLTZER, APTAKER & SHEPPARD, WASHINGTON, DC; AND MARY WALKER, DEPUTY ASSISTANT ATTORNEY GENERAL, LAND AND NATURAL RESOURCES DIVISION, U.S. DEPARTMENT OF JUSTICE, ACCOMPANIED BY STEPHEN D. RAMSEY, CHIEF, ENVIRONMENTAL ENFORCEMENT SECTION, LAND AND NATURAL RESOURCES DIVISION; CHARLES GOODLOE, JR., ASSISTANT U.S. ATTORNEY, SOUTHERN DISTRICT OF INDIANA

Mr. LUCERO. Yes, sir. Would you like me to also identify the Department of Justice personnel as well?

Mr. LEVITAS. Well, I was going to give Ms. Walker that opportunity.

Mr. Lucero, if you know who they are, then please do so.

Mr. LUCERO. I am glad to do that, Mr. Chairman.

My name is Gene Lucero and I am the Director of the Office of Waste Programs Enforcement which is in the Office of Solid Waste and Emergency Response.

With me on my left from my office is Dr. Frank Biros, who is the Acting Director of the Technical Division within the Office of Waste Programs Enforcement.

Also at the subcommittee's request are a number of other EPA officials from headquarters and from region V and I would like to introduce those people, as well.

Mr. LEVITAS. As they are introduced, if each of them would raise their hand so we can identify you.

Mr. LUCERO. The first is Mr. Mitchell Burack, who is an attorney-adviser in the Office of Enforcement and Compliance Monitoring.

Also from my office, and he is not listed on the witness list, but he is here with us, is Mr. Kevin Garahan, who is a Regional Coordinator from my office, the Office of Waste Programs Enforcement.

From region V, I have Mr. Richard Bartelt, who is the Superfund Coordinator for region V.

Sitting next to him is Ms. Beverly Kush, who is an Environmental Engineer for Remedial Response Branch of the Waste Management Division in region V. That is the same division that Mr. Bartelt is in.

Ms. Kush is also the on-scene coordinator for the Seymour site. There are two attorneys that have been requested to be here from region V. On this side is Mr. Larry Kyte, Assistant Regional Counsel.

Directly behind me is Ms. Pamela Rekar, also an Assistant Regional Counsel from Region V. I think those are the folks that the subcommittee has requested attend.

There are others in the audience.

Mr. **Levitas**. Who are the others here from EPA, Mr. Lucero?

Mr. **Lucero**. Ms. Linda Fisher, who is a Special Assistant to Lee Thomas, sitting directly behind me. Ms. Chaille Cooper, who is with the Office of Legislation.

Mr. **Levitas**. Are you willing to introduce the Justice Department officials, too?

Mr. **Lucero**. Yes. First of all, as you have recognized, Ms. Mary Walker, Deputy Assistant Attorney General for the Land and Natural Resources Division for the Department. Next, Mr. Stephen Ramsey, Chief of Environmental Enforcement Section of the Land and Natural Resources Division. On the far end of the table is Mr. Charles Goodloe, who is an assistant U.S. attorney for the southern district of Indiana.

I think that is about it.

Mr. **Levitas**. What about Mr. Hammock?

Ms. **Walker**. Mr. Chairman, as I understand it, Mr. Hammock is in San Francisco attending a hearing before District Court Judge Pecham and the committee has been advised that he was unavailable today.

Mr. **Levitas**. Are there any other officials of the Justice Department here today?

Ms. **Walker**. There are some staff members from the Department of Justice, yes, Mr. Chairman.

Mr. **Levitas**. Could you identify them, please?

Ms. **Walker**. Mr. Larry Wallace, Chief of the Section of Policy, Legislation and Special Litigation; Jeff Minear, a staff attorney with that section. Marty Kaplan, a paralegal with PLSL Section; and Ann Gailis, a staff attorney with the Environmental Enforcement Section.

Mr. **Levitas**. Where is that last individual?

Ms. **Walker**. And Ron Bonds, who is also a staff attorney with the Environmental Enforcement Section.

Mr. **Levitas**. Thank you very much.

Mr. Lucero, you may proceed.

Mr. **Lucero**. Mr. Chairman, there is one other person from region V who I overlooked. Mary Gaity, who is also an assistant regional counsel from region V.

Mr. **Levitas**. Thank you.

Mr. **Lucero**. If it is acceptable to the committee, I would proceed with my testimony.

I appreciate being here today on this panel that has been convened by the Oversight and Investigation Subcommittee of the

House Public Works and Transportation Committee to investigate the Government's actions concerning the cleanup of the Seymour Recycling Corp. site in Seymour, IN. We welcome the opportunity to present information to Congress and the public on the settlements involving the Seymour site and the controversial issues that have arisen during the long period of negotiations with responsible parties from 1980 through 1983.

I have written testimony which I have prefiled with the subcommittee. I will be summarizing that written testimony since it is fairly lengthy.

Before I begin, however, I would like to note that the testimony covers a wide range of time and issues that were involved in this case. Some of the people who were involved at critical points in the case are no longer available to the agency. Most of the final decisionmakers involved in this case have left the Agency and as a result this is a composite statement put together from personal knowledge of those who are with me today as well as from what we could determine from our own research.

With one or two exceptions, I would like to note that each of the witnesses that are with me today were asked to review this testimony and to identify any possible mistakes or inconsistencies. To the best of my present knowledge, it is accurate based on the facts as we know them.

With that, I understand from the prior 2 days of testimony that you have had a great deal of information provided to you about the Seymour site itself and for that reason I am not going to spend time revisiting that. That is included in my testimony.

What I would like to do is to start at approximately the time period when EPA and the Coast Guard had spent approximately $2 million of Clean Water Act, 311 and pre-Superfund money to stop the discharge or eliminate the threat of serious discharge of hazardous substances from the site. This, as I understand it, began in 1980 and has proceeded over a period of time and we will be prepared to answer questions about that.

In addition, at this site, EPA has conducted studies offsite to determine the extent of soil and water contamination and to determine the existence and extent of buried waste. It is also an issue, I know, that the subcommittee is interested in and I will return to it.

As to site ownership, which begins on the third page of my written testimony, the city of Seymour, IN, is the owner of the real property upon which the Seymour Recycling Corp. conducted its business. The agency has determined that this site is municipally owned and consequently under section 104(c)(3) of the Comprehensive Environmental Response Compensation and Liability Act, that is, CERCLA or Superfund, the State of Indiana would have to fund 50 percent of any response actions taken by Superfund.

I will return to that point again.

As to the Superfund response issues at this site, and at this point, I need to indicate to the subcommittee my written testimony is not as clear as it should have been, because funds for planning, removal or remedial response under CERCLA, were not available in 1982 for work at the Seymour site. Because of the way the section 104(c)(3) is written, that 50-percent cost share from the State of Indiana would have been required for either a removal action, that is, an emergency action or for a remedial investigation or feasibility study, or for any work necessary at that site in the remedial context. That is not as clear as I would have liked it for my testimony. I wanted to emphasize that for the subcommittee.

As we will talk about in this testimony and as we will explain in answers to your questions, the State of Indiana was unable to provide a 50-percent cost share and as a result, the use of Superfund response authorities at the Seymour site could not be undertaken.

The only option available to the Government was to look to private party cleanup through either settlement or enforcement action.

Now, I want to touch upon the litigation and negotiation history in response to your concerns about how it proceeded.

A RCRA 7003 and Clean Water Act 311 civil action was filed by the United States on May 9, 1980, against 12 defendants, which included the Seymour Recycling Corp., associated firms and individuals, the city of Seymour, and the board of aviation commissioners. It was apparent to us at that time that many of the corporate and individual defendants did not have the resources necessary to clean up the facility. As a result, and through information obtained in the 1980 lawsuit and other sources, EPA initially identified well over 600 potential generators and transporters of waste at the Seymour site.

This list, by the way, was subsequently shortened to approximately 368.

Notice letters were sent to about 100 of the largest generators in the fall of 1980, and the sending of those letters was followed by individual meetings with many of the larger companies beginning in March 1981; a negotiation group of the largest generators formed in the fall of 1981.

In May 1982, a second set of notice letters were issued to approximately 360 potential generators, transporters and thereafter notice letters have been sent as new potentially responsible parties were identified.

Now, as a result of these contacts with responsible parties, several different offers to settle were made to the Government.

Mr. Molinari. Would you please hold just a second on that, Mr. Lucero. That 360, that figure you just used, did that include the original 100 that received the original notice or was this an additional 360?

Mr. Lucero. It is inclusive, sir. It includes the original ones.

Mr. Molinari. Thank you.

Mr. Lucero. The first offer was made to the agency and to the Government in June 1982 and was for a $4.5 million cashout. I have described this in detail in my testimony. I just want to touch on a couple of key points.

Approximately 70 companies were involved who have contributed approximately half of the hazardous substances that have been allegedly shipped to the site. In this hearing, we will refer to this group as the Bayh group, as it has been historically referred to in agency discussions.

This group proposed to the agency that there wasn't a significant subsurface problem and they further proposed that any additional costs should be obtained from the State, the city, and from the Seymour Manufacturing Corp. This proposal was rejected by the Government.

During this same period, thought was being given to the use of pro rata settlements with individual generators. This approach depended on being able to make either a sound engineering cost estimate or a worst case cost estimate. The former was not immediately possible because of the presence of drums on site preventing the gathering of the necessary data on subsurface contamination. Therefore, in approximately June 1982, it was decided to develop a worst case cost estimate which would form the basis for a pro rata settlement offer to all generators and transport companies.

Our calculations were that approximately half the work was required for surface cleanup and the other half for subsurface work. Under the worst case analysis, this led to a total cleanup estimate of $30 million, which included substantial contingency factors.

The Government decision to offer pro rata settlement to all generators and transporters was first communicated to the Bayh group in June 1982. The plan was to tender the offer in September and then file litigation against nonsettling generators in October.

After the Bayh group offer was rejected in June, but before the Government tendered its pro rata offer, a new approach was suggested by a representative of IBM. The proposal was for a small group of generators to provide a total surface cleanup in exchange for a release from liability by the Government.

A technical plan was provided by the IBM representative. It was prepared by Chemical Waste Management for the group and was submitted to the Government in August 1982.

I would now like to talk about settlement negotiations and the initiatives in August 1982.

The situation that the Government was faced with in the late summer of 1982 was that there was a serious public health and environmental problem represented at the Seymour site. The lawsuit which had been filed in 1980 against the defendant seemed unlikely, as then structured, to compel a financially capable group of defendants to undertake a total or even partial site cleanup. The negotiations to date with generator and transporter responsible parties had not yielded a realistic prospect for site cleanup and there was the high probability, as I have discussed, that Superfund could not be used to clean up the site because the State of Indiana had and still has insufficient funds to cost share 50 percent of the remedial planning and response actions for the site.

In a series of meetings during August 1982 involving EPA, the Department of Justice, State of Indiana, and others, it became obvious that a timely site cleanup at Seymour could be achieved only if a concerted intergovernmental effort was initiated, based on an expeditious time schedule and managed effectively.

Rita Lavelle, at that time, the Assistant Administrator for OSWER, and other decisionmakers decided to pursue negotiations with responsible parties on an expeditious schedule which targeted settlement or litigation for October 1982.

There were many factors that were considered in the decision to move quickly with enforcement actions at Seymour.

I would like to discuss these factors with you. They are listed in more detail in my testimony.

The first was the health and environmental problems at the site. The Seymour site presented one of the most serious health and environmental problems in the Midwest. And I would couple this with the second factor which was a heightened public awareness about the human health and environmental problems presented by the site. This was demonstrated by continued press attention locally and nationally as well as communications to the agency about the problems there from citizens, municipal officials, the State of Indiana officials as well as region V officials.

There was general concern that despite the EPA emergency response efforts under RCRA and Clean Water Act authorities that had been taken at the site, hazardous substances would continue to be released from the site to affect ground water supplies in the area. In other words, there was serious concern that the problems would get much worse if left unattended.

In addition, there was a real concern for the fire and explosion hazard presented by the site and the potential danger to the community at Seymour.

Another factor that I have already touched on and I just want to mention again was that there was no alternative to use the fund to promote a responsible or cleanup action at the site.

As I discussed in my testimony and I will mention now, there was serious consideration given at the beginning of August of creative ways in which the State of Indiana might be able to pledge money that they didn't yet have from taxes which hadn't yet gone into effect on the possibility that if the United States would accept this, they could meet some part of the State match requirements. Some thought was given to that, but was eventually rejected on the advice of the Office of General Counsel and other decisionmakers.

There was a concern as well about the time that would be necessary to get this cleanup done. The proposals, or I should say the proposal, that had been presented by the IBM group, if implemented immediately, had the advantage that delays that might be caused by winter conditions could be avoided. This was a concern that figured into our calculations.

In addition, and something that you have touched upon in your testimony and that of Congressman Molinari, there was concern from both Senator Lugar and Governor Orr of Indiana that unless enforcement or response actions were taken expeditiously by EPA, conditions at Seymour would continue to deteriorate to possible disastrous consequences to the people of Seymour, IN.

And given the situation of the State's finances, it became extremely important to them eventually that the agency look to vigorous enforcement measures for site cleanup as the only likely alternative at the site.

Still another factor that figured into the considerations of what to do and how quickly to do it at the Seymour site involved the amendment that had been proposed by Congressman Fithian of Indiana.

Partly in response to the Seymour situation, he had developed and promoted an amendment to section 104(c)(3), which I have already mentioned, which would have applied the 50-percent State cost-share requirement only to sites that were owned and were primarily operated by the State or any political subdivision at the time of disposal of hazardous substances by the State or political subdivision. The impact of this amendment nationally would have been to increase the number of sites eligible for a 90/10 cost-sharing arrangement.

In order to alleviate the need for the amendment, the Assistant Administrator for OSWER encouraged resolution of the Seymour problem through enforcement action.

Together these factors provided the impetus to pursue settlement negotiations in the fall of 1982. By late August 1982, EPA decided to continue enforcement action at Seymour on several different tracks.

The first track was to pursue the IBM negotiation on the proposal which included the technical proposal from Chemical Waste Management. The group of attorneys was organized and negotiations were conducted on that basis. Initially, a scheduled deadline of October 1, 1982, was established for reaching an acceptable agreement. In fact, a settlement agreement was announced about 4 weeks later on October 26, 1982.

The second track, tied very intimately to the first track, was the technical negotiations which were led at least from the Agency's viewpoint by both representatives of my office and representatives of region V and the State of Indiana. These negotiations concluded in agreement fairly soon in September 1982. At that point, it was necessary to wait for the first track and the third track to catch up.

The third track which I just mentioned was to complete development of the pro rata settlement proposal which the Agency had decided to offer to all responsible parties in June 1982.

This involved making such a one-time offer to all 368 companies which had been identified as potentially responsible parties.

There was some concern to tie the first track; that is, the discussions with IBM and the third track together so that the agreements that were reached would be identical and consistent and it would not create tensions between the two tracks.

The fourth track was that if all of these efforts failed in the first three tracks was to prepare for litigation against nonsettlers for the balance of cleanup at Seymour.

In any event, the cleanup negotiations with IBM, if successful, would only address the surface problems at the site. The pro rata settlement track was not anticipated to provide fully the balance of the estimated subsurface cleanup costs at Seymour. Therefore, it was necessary to draft an amendment to the pending civil litigation in Federal district court which would add nonsettling defendants against which the Government could pursue the balance of cleanup.

Now, I am going to briefly talk about what came of all of these. I would like to use a visual aid, if I might, Mr. Chairman.

Mr. LEVITAS. Do you need a stand?

Mr. LUCERO. I was going to ask Mr. Biros to place it in front of one of the photographs. We can remove it afterwards.

Mr. LEVITAS. Fine.

Mr. LUCERO. What I am going to be talking about here is represented essentially on this chart. There are some explanations that I will need to make over time, but it shows to some extent where everything went; the results.

The IBM group negotiations culminated in the signing of a consent decree on October 21, 1982, by 24 generator and transporter responsible parties and the Federal, State, and municipal governments. You will note, looking at that chart, that what this is supposed to represent is the responsible parties at the site which are represented on the left-hand side and the fallout of these parties on the various track, represented on the right-hand side. The 12 in the top box on the right represent the original complaint. Below that the 24 plus 1 represents the IBM negotiations and the chart shows what came of it, namely a surface cleanup by those parties.

Let me return to my statement.

Regarding the first and second track, an agreement was reached in October. The consent decree was immediately lodged in the Federal district court in Indianapolis. Following two court hearings at which the public, including all identified responsible parties, were given an opportunity to be heard, the court approved and entered the consent decree on December 15, 1982. In a memorandum issued that day, the court found the consent decree was in the public interest and met the judicial tests of legality, fairness and reasonableness required in such documents.

Surface cleanup by Chemical Waste Management began immediately pursuant to the technical proposal which had been approved as part of the consent decree.

Beginning October 28, 1982, the Government sent out covenants not to sue to the 368 companies associated with the Seymour site. To date, over 204 companies have accepted the pro rata offer pledging the total of $5.4 million which has been, to my knowledge, collected.

On December 9, 1983, the Government filed an amended civil action in Federal district court adding 55 nonsettling defendants and claims under the amended RCRA statute and CRCLA. I would like to note up there on that chart that the number of 50 represents 50 companies. There were five officers of corporations that were added and that is the reason for the discrepancy between the complaint and what is represented up there.

The amended complaint is necessary to attain full relief in the case. It seeks remedies to conditions which may contribute to or present an imminent hazard at the site including cleanup of all remaining contamination in the soil and ground water on and off site.

The Government also seeks recovery for natural resource damages, recovery of all funds expended by it for all cleanup, removal, and remedial actions and other enforcement activities related to the site and its costs of suit.

Mr. **Levitas**. Excuse me, Mr. Lucero. Will you furnish us a list of the additional defendants, the 50 corporations and the 5 officers?

Mr. **Lucero**. Yes, sir.

Mr. **Levitas**. And also, either furnish us or if you know, if those 50 responsible parties had cashed out, what would have been the total amount that they would have paid into the fund for cleanup.

Mr. **Lucero**. I can answer the first part.

The Department of Justice has a copy of their press release which they issued on the date that the suit was filed. It lists the parties to the lawsuit.

Mr. Levitas. Without objection, that will be made a part of the record.

[Information received from Mr. Lucero follows:]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) Civil Action No.
) IP-80-457-C

Oct 14, 1982

SEYMOUR RECYCLING CORPORATION;)
ENVIRONMENTAL PROCESSING CORPORATION;)
SEYMOUR MANUFACTURING CO., INC.;)
CHEM-DYNE CORPORATION;)
K.O.I. PETROLEUM COMPANY, INC.;)
TRANSENVIRONMENTAL CORPORATION;) 1)
CITY OF SEYMOUR, INDIANA;)
BOARD OF AVIATION COMMISSIONERS,)
Seymour, Indiana;)
WILLIAM L. KOVACS;)
BRUCE WHITTEN;)
WILLIAM VANCE, in his capacity as)
receiver of Seymour Recycling)
Corporation;)
JACK ZETTLER, in his capacity as)
receiver of Chem-Dyne Corporation,)
K.O.I. Petroleum Company, Inc.,)
Transenvironmental Corporation;)
STANLEY BIRGE, SR.;)
STANLEY BIRGE, JR.;)
CLIFFORD BIRGE;)
WILLIS HOBSON;)
HAROLD S. HOBSON;)

23.7% → $30,000,000

23±%
23.3 − 23.9 %
total % of waste sent to site.

% of waste

Dollar
↓

4% MONSANTO COMPANY; → $ 1,321,450.68)
1.78 CARSTAB CORPORATION; → $ 533,676.28)
1.64 KENDALL COMPANY; → $ 490,978.01)
1.53 JONES CHEMICALS, INC.; → $ 459,571.82)
1.13 MOBIL CHEMICAL COMPANY; → $ 274,600.73)
.98 INMONT CORPORATION; → $ 278,469.01)
.82 LENK MANUFACTURING COMPANY → 245,092.48)
.69 GUARDSMAN CHEMICALS, INC. → 207,467.96)
.68 PHELPS DODGE INDUSTRIES, INC. → 204,351.30)
.67 PB&S CHEMICAL COMPANY, INC. → $ 202,405.57)
.61 KENTUCKY ELECTRONICS CORPORATION → $ 182,359.59)
.59 CONTRACTORS UNITED, INC.; → $ 178,191.78)
.57 STEWART-WARNER CORPORATION; → $ 171,557.73)
.41 UNITED STATES STEEL CORPORATION → $ 130,382.12)
.49 ASHLAND OIL, INC.; → $ 147,188.74)
.49 MULLER INDUSTRIES; → $ 145,220.29)
.43 ANGELL MANUFACTURING COMPANY; → 128,123.19)
.41 GLOBE UNION CORPORATION; → $ 127,663.90)
.38 LAKEWAY CHEMICALS COMPANY; → $ 119,813.55)

.24	VELSICOL CHEMICAL CORPORATION;	101,159.25
.33	DAYTON PRESS, INC.;	99,501.21
.31	NATICO, INC.;	94,731.31
.31	CLOUDSLEY COMPANY;	94,419.21
.31	HAAS CABINET CO., INC.;	93,065.91
.29	A.O. SMITH CORPORATION;	87,652.68
.28	TECHNICAL PRODUCTS, INC.;	85,154.26
Johns .35	MANVILLE CORPORATION;	74,783.95
.27	COLUMBIA ORGANICS CORPORATION;	69,179.56
.20	PORTER PAINT COMPANY;	60,378.53
.19	SARKES TARZIAN, INC.	58,920.92
.19	EGYPTIAN LACQUER MFG CO., INC.	56,346.80
.18	UNION CARBIDE CORPORATION;	55,182.76
.17	HUDSON WIRE COMPANY;	52,466.66
.17	SUPERIOR OIL COMPANY, INC.;	51,340.51
.14	IVC INDUSTRIAL COATINGS, INC.;	48,201.77
.14	EMCONITE CORPORATION;	41,450.95
.12	BLATZ PAINT COMPANY;	40,495.12
.13	REYNOLDS METALS CORPORATION;	34,830.16
.11	AM GREETINGS COMPANY;	34,353.19
.11	E.H. MARCUS PAINT COMPANY;	34,249.09
.11	MULTI-CHEM CORPORATION;	33,605.56
.12	FERRO CORPORATION;	35,290.09
.05	EMERY INDUSTRIES;	26,479.40
.05	AURORA CASKET COMPANY, INC.;	25,816.94
.06	BURKE-HALL CORPORATION;	23,422.63
.07	KLOR-KLEEN, INC.;	22,069.32
.06	DRESSER INDUSTRIES;	19,258.60
.07	JELLICO, INC.;	10,410.06
.03	CUSTOM INDUSTRIAL CORPORATION;	9160.85 (9168.51)
.01	FOSTER TRANSFORMER CORPORATION (Seymour Electronics Division);	3539.42
	INTERNATIONAL BUSINESS MACHINES CORPORATION;	7,110,557.42
	GENERAL MOTORS CORPORATION;	
	E.I. du PONT de NEMOURS & COMPANY, INC.;	
	GENERAL ELECTRIC COMPANY;	
	PENNWALT CORPORATION;	
	WESTERN ELECTRIC COMPANY;	
	UNITED TECHNOLOGIES CORPORATION;	
	ATLANTIC RICHFIELD COMPANY;	
	BORG-WARNER CHEMICALS, INC.;	
	RCA CORPORATION;	
	BEMIS COMPANY, INC.;	
	FORD MOTOR COMPANY;	
	WHIRLPOOL CORPORATION;	
	MCDONNELL DOUGLAS CORPORATION;	
	DOW CORNING CORPORATION;	

Mr. **Levitas**. What about the second part of my question?

Mr. **Lucero**. I think it might take us a little time to look into that.

Mr. **Levitas**. If somebody would come up with that so that I can get it into the record later this morning.

Mr. **Lucero**. All right.

With that, I would like to go to the current site status. As noted in my testimony, and I would like to emphasize today, the surface cleanup activities at the site are virtually completed by Chemical Waste Management.

In addition, a remedial investigation and a feasibility study for evaluation of remedies for subsurface cleanup are underway. I should note that this remedial investigation will include electromagnetic studies to determine if there are buried drums, but these studies have been delayed until such time as all metal on the surface has been removed in order not to cause problems with the test.

I note that because that was an issue that was raised in earlier testimony and is of concern to the subcommittee.

Now, I would like to talk about the criticisms on the settlement.

Since the events of the fall of 1982 relating to the Seymour settlements, this subcommittee, in addition to other congressional committees, have investigated all aspects of the Seymour case. The investigations have been initiated as a result of charges from various groups, that the settlement was motivated and expeditiously pursued on an election track because of an intent to affect the outcome of political elections in Indiana; that the consent decree was unfair to certain responsible parties who were not permitted to participate in the IBM group, and that the surface cleanup settlement was a sweetheart deal because the IBM group settlers were able to secure cleanup at approximately one-half the Government's estimated costs.

I would like to address these issues with the information that was available to us, Mr. Chairman, and by explaining the thinking that went through our mind, which is detailed in my testimony.

First, as to the total release from legal liability, the consent decree settlement provides a covenant not to sue, execute judgment or take any civil, judicial or administrative action with respect to surface cleanup and soil and ground water cleanup at the Seymour site. Generally, and I have mentioned this to the subcommittee the last time I was here to testify, it is not EPA policy at this time to provide such full releases in return for a portion of site cleanup by responsible parties except in such extraordinary circumstances. We believe these were presented by the Seymour site.

The surface cleanup settlement could not have been achieved without a full release of the 24 responsible parties which agreed to address one-half of the estimated Seymour site problems and represented one-half of the hazardous waste at Seymour. This was one of the facts that we attempted to negotiate. It became a critical part of the discussions. There would have been no agreement without this full release. Under the circumstances, we believe this was acceptable.

For one reason the Seymour surface cleanup settlement presents certain safeguards which were considered sufficient to protect the Government's and the public's interest in site cleanup at Seymour.

Given this total release, we were concerned about the ability of Chemical Waste Management, who was going to perform the work, to follow through and do it.

Certain additional safeguards were obtained in response to our concerns. First, a bond of $15 million, twice the cost of the Chemical Waste Management surface cleanup propoal, was obtained which was sufficient to guarantee that the surface cleanup would be accomplished in any event.

And this was not your typical bond. It was a bond that assured performance, not a bond that provided for payment in the event of nonperformance. In addition Chemical Waste Management itself was a large firm that had much experience in this area, and we expected no serious problem in its performance. But as an additional safeguard, there was insurance that they were required to carry as part of the settlement. This was to protect all parties of interest against personal injury, property damage and sudden environmental impairment. And finally, as we saw it, at the time, there was a large pool of nonsettlers who would remain candidates for litigation to seek the balance of cleanup costs at Seymour.

In summary, in the minds of the IBM group, the total release was the principal factor favoring the settlement for surface cleanup at Seymour. Without that concession, no cleanup would have been possible. But again, I note that such releases were not a part of EPA's present policy—excuse me—are not a part of EPA's present policy as expressed in EPA's formal settlement principles as set forth in October 1983. Of course, there is an exception for extraordinary circumstances.

It is very possible, however, that in similar circumstances, EPA would do the same. As we discussed in our meeting with you on the settlement policy, where there are extraordinary circumstances, the agency may have to consider adjustments to its general policy.

But as I would like to reemphasize, our general policy now, in part as a response to the kinds of criticisms that have been raised, is to develop a policy against such a full release.

Another issue I would like to talk briefly about is the adequacy of surface cleanup and the proposal made by Chemical Waste Management. The initial proposal which was presented was subsequently negotiated and it was adjusted.

Several concessions were made in those negotiations to the agency. Two very important ones listed in my testimony were that removal of soil under the drums and tanks and any other visibly contaminated soil to a depth of 1 foot would be provided.

This involved approximately 70 percent of the surface of the site. In addition, a very important point that we achieved in this negotiation was that we received a commitment as part of the negotiations for comprehensive site air monitoring during the removal activities.

Achieving that particular concession at the site has allowed us to demand similar concessions at other negotiations. We have used that to leverage at other sites. It was a major accomplishment. It had not routinely been accomplished prior to that.

I would also note that the State of Indiana, who did testify, participated fully in the technical negotiations for site cleanup.

On-scene oversight of the Chemical Waste Management actions were provided on a continuous basis by EPA and Indiana. I know you have heard from the State of Indiana.

The on-scene coordinator is here with us today and can answer questions in that regard. RCRA compliance was required in all appropriate phases of the removal activities. EPA protocols and procedures for waste characterization and analysis were also required.

Having touched on those, I would like to talk about the matter that Congressman Molinari raised concerning Chemical Waste Management.

At the time that the proposal was made, Chemical Waste Management was under investigation by EPA for violation of RCRA regulations at one facility that I am aware of. That action, which involved Lowry Landfill has resulted in a 3008 action being filed against them.

To the best of my present knowledge, I think that is in active litigation—or, excuse me, it is before an administrative law judge to the best of my knowledge. For this and other reasons, EPA's acceptance of this firm as cleanup contractor was criticized by certain parties.

I should note that this fact made the agency nervous, as well. However, at the time of the settlement, the company was a reputable firm with broad experience in hazardous waste management. Since no judicial or administrative action at that time had been initiated against the firm by governmental entities, the decision was made to accept them as the contractor to the 24 companies.

It should be noted, since it is not mentioned in any testimony, but in anticipation of a question based on the earlier days' testimony, we did raise that issue of using Chemical Waste during the negotiations. We indicated our concern, but that was one of the nonnegotiable things that the industry negotiators maintained they would not change about the proposal.

Again, as I mentioned earlier in response to the concerns about the use of this particular company, we required an additional $15 million bond, as well as other assurances, which I just touched on a minute or two ago.

I would also like to talk about how the decision was made in this. I am sure we will have further discussion on it, but there were a large number of decisionmakers in this case. No one person was singularly responsible for what happened. At least that was my view.

I would like to identify the people that had to approve the consent decree as proposed before it would go forward to the court. At the Department of Justice, it was Carol Dinkins, Assistant Attorney General for Land and Natural Resources.

She has left the Government for private practice—and Sara Barker, southern district, Indiana, U.S. attorney. Both these women were signatories.

For the State of Indiana, Robert Orr had to sign on behalf of the State departments. In addition, the document was approved by the attorney general, Linley E. Pearson.

At EPA, the signatories to the document were Robert Perry, then Associate Administrator for Legal and Enforcement Counsel and Val Adamkus, the region V Administrator. Rita Lavelle did not sign the document, but she did participate in the decisionmaking. In addition, there were three municipal corporations that were involved.

The president and council for the Board of Aviation Commissioners of the city of Seymour and the mayor of the city of Seymour, IN, all eventually signed the consent decree.

Of course, other State officials, EPA and DOJ staff participated in and influenced the process of the Seymour settlement strategy.

I would like to touch on two last points .

One is the issue of unfairness of the consent decree settlement. Various responsible parties at Seymour have complained that the settlement was unfair because they were precluded from participating in the IBM group.

While EPA was aware that certain parties had been excluded from the IBM group, EPA did not dictate which party was in or out. EPA's position, expressed on several occasions to the settlement group, was that the agency was willing to negotiate terms of the surface cleanup proposal if it was made by a group of parties representing not significantly more than 50 percent of the hazardous waste contributed to the site.

Neither EPA nor any other Government party to the settlement influenced either the responsible party composition of the settling group, or the contributions of the individual members to the trust fund established to fund the surface cleanup project.

As to the charge that this settlement was a sweetheart deal. This was a particularly widespread criticism of the Seymour surface cleanup settlement. The argument was that it represented a sweetheart deal to the settlers since it allowed them to settle for a cost which was one-half of the Government's estimated cost for surface cleanup at Seymour, approximately $7.7 million.

This criticism, I believe, misstates the facts. When we negotiated with the IBM group for surface cleanup at the site, a project representing one-half of the total cleanup rather than one-half of the total cost necessary for restoration of the Seymour site, was discussed.

Our estimates, the Government's estimate of that one-half of work, that is, the surface cleanup, was $13 million. And that was based on "worst case" assumptions. The IBM group had a contract which said that that could be performed at a lesser price, $7.7 million. So long as the work could be assured, we did not argue over the amount of money that it would cost them to perform. Our interest was to have that 50 percent of the work performed. In our view that was appropriate at the time.

I have covered briefly all of my statement. I know that you have called a lot of other people, and of course, the Department of Justice still has its statement to give.

My statement has been based on information which was provided to me by others, and some personal knowledge that I have had. I have attempted to provide a very quick history of the settlement strategy respecting Seymour, and I have attempted to deal very quickly with key criticism respecting that strategy.

I am prepared as well as the other members of EPA that are with me today to try to provide you as much detail as you would desire.

Thank you.

[The prepared statement of Mr. Lucero follows:]

PREPARED STATEMENT OF GENE LUCERO

My name is Gene Lucero. I am the Director, Office of Waste Programs Enforcement, in the Office of Solid Waste and Emergency Response, U.S. Environmental Protection Agency. With me on the panel is Frank Biros, Technical Division Director, Office of Waste Programs Enforcement. We also have with us a number of people from EPA Headquarters and Region V, as requested by the Subcommittee.

We are happy to be here on this panel, convened by the Investigations and Oversight Subcommittee of the House Public Works and Transportation Committee, to investigate the government's actions concerning the cleanup of the Seymour Recycling Corporation (SRC) site in Seymour, Indiana. We welcome this opportunity to present information to the Congress and the public on the settlements involving the Seymour site and the controversial issues that have arisen during the long period of negotiations with responsible parties from 1980 through 1983.

The Seymour Recycling Corporation site was a chemical reclamation, storage and disposal facility founded around 1970. The site is located about two miles from Seymour, Indiana and covers 13 acres. The facility was operated in an environmentally unsound manner and large quantities of hazardous wastes accumulated and were stored in drums and bulk storage containers on site.

The facility was shut down by the Indiana State Board of Health in February 1980 after repeated, but unsuccessful, attempts by the State to order the Seymour Recycling Corporation to clean up. The site is property within an industrial park leased from the Board of Aviation Commissioners of the City of Seymour, Indiana.

Present at the site in mid-1980 were approximately 50,000 55-gallon drums and 98 bulk tanks containing solid and hazardous wastes. Many of the drums which contained toxic and flammable chemicals were rusted, damaged and leaking. The site posed a substantial fire and explosion hazard. Moreover, during the facility's operation, highly toxic and reactive chemicals were spilled indiscriminately and allowed to migrate off-site via surface water and groundwater.

Up to the end of 1982, EPA and the Coast Guard had spent approximately $2 million of Clean Water Act § 311 and pre-Superfund money to stop the discharge or eliminate the threat of serious discharge of hazardous substances from the site. Site responses had included diking, berming, grading, staging of drums of compatible substances and explosive materials, installation of a catch basin with charcoal filtration system to collect and treat contaminated surface waters, fencing and removal of over one-quarter million gallons of bulk stored liquid wastes. In addition, EPA conducted studies off-site to determine the extent of soil and water contamination and to determine the existence and extent of buried wastes.

SITE OWNERSHIP

The City of Seymour, Indiana is the owner of the real property upon which the Seymour Recycling Corporation conducted its business. The Board of Aviation Commissioners of the City of Seymour has the power to sue and be sued in the name of its municipality under Indiana Code. It also has the power to lease property under Indiana Code. The Board of Aviation Commissioners of the City of Seymour, Indiana leased the Seymour site to Seymour Recycling Corporation (SRC) and to its predecessor in interest, the Seymour Manufacturing Corporation (SMC). The Agency has determined, therefore, that the site is municipally owned and consequently, under § 104(e)(3) of CERCLA, the State of Indiana would have to fund 50 percent of any remedial response actions taken by Superfund.

SUPERFUND RESPONSE ISSUES

Funds for planning, removal and/or remedial response under CERCLA were not available in 1982 for work at the Seymour site. Removal response authorities under CERCLA were conservatively applied at the time. Furthermore, the magnitude of the surface cleanup would have involved expenditures well in excess of the statutory limit of $1 million, and a response duration of greater than the six month limit, for removal actions.

A remedial investigation and a feasibility study, as well as remedial action, would have required 50 percent cost sharing by Indiana. Indiana did not have sufficient funds available to co-fund Superfund planning or remedial actions. In other words, no response action at Seymour could be undertaken, unless private party cleanup could be arranged through settlement or enforcement action.

LITIGATION AND NEGOTIATION HISTORY

A RCRA § 7003 and CWA § 311 civil action was filed by the U.S. on May 9, 1980 against 12 defendants including the Seymour Recycling Corporation, associated firms and individuals, the City of Seymour and the Board of Aviation Commissioners. It was apparent that many of the corporate and individual defendants did not have resources necessary to clean up the facility. One of the individual defendants has filed bankruptcy. The EPA strategy in the latter part of 1980 was to identify generators and transporters of wastes (responsible parties under § 1067 of CERCLA) taken to the site and seek voluntary cleanup by one or more of the group through negotiations. Through information obtained in the 1980 lawsuit and other sources, EPA initially identified over 600 potential generators and transporters of wastes of the Seymour site. This list was subsequently shortened to 368 companies.

Notice letters were sent to about 100 of the largest generators in the fall of 1980, and were followed by individual meetings with many of the larger companies, beginning in March 1981. A negotiation group of the largest generators formed in the fall, 1981. This group asked for early input into any feasibility studies for site cleanup, which was acceptable. This group was also concerned that many smaller generators had not been sent notice letters. In May 1982 a second set of notice letters were issued to about 360 potential generators/transporters, and thereafter notice letters were sent to new potentially responsible parties as they were identified.

Several different offers to settle were made to the government. The first was made in June 1982 and was for a $4.5 million cash out. The offer was from a group of approximately 70 companies who contributed about half of the waste allegedly shipped to the site. (This group is referred to as "the Bayh group".) They proposed that the government offer each generator a covenant not to sue in exchange for a pro rata share of the $4.5 million, based on volumetric contribution of wastes shipped to the site. The bases of the offer were cost estimates for surface cleanup from three contractors, ranging from $10.5 to $12 million. The group did not believe there was a significant subsurface problem based upon past EPA studies. Finally, the group argued that the State and City and SMC should pay the remaining costs associated with the site cleanup. This proposal was rejected by the government.

During the same period, thought was being given to the use of pro rata settlements with individual generators. This approach depended on being able to make either a sound engineering cost estimate or a "worst case" cost estimate. The former was not immediately possible, because the presence of the drums on site prevented the gathering of the necessary data on subsurface contamination. Therefore, it was decided to develop a "worst case" cost estimate, which would form the basis for a pro rata settlement offer to all generator/transporter companies from the government. Approximately half the work was required for subsurface cleanup and the other half for subsurface work. Under the "worst case" analysis this led to a total cleanup estimate of $30 million, which included contingency factors.

The government decision to offer pro rata settlement to all generators and transporters was first communicated to the Bayh group in June 1982. The plan was to tender the offer in September and then file litigation against non-settling generators in October.

After the Bayh group offer was rejected in June, but before the government tendered its pro rata offer, a new approach was suggested by a representative of IBM. The proposal was for a small group of generators to provide a total subsurface cleanup in exchange for a release from liability by the government.

The government responded that it would be willing to consider such a proposal. This resulted in a group of companies being formed under the leadership of IBM and a technical plan for cleanup being prepared by Chem Waste Management (CWM) for the group and submitted to the government in August 1982. The negotiations with this group, eventually successful, will be discussed later.

SETTLEMENT NEGOTIATIONS—INITIATIVES OF AUGUST 1982

In the late summer of 1982 the government was faced with the realities of a serious public health and environmental problem represented by the Seymour site; a two year old lawsuit against defendants unlikely to be financially capable individually or collectively of undertaking a total or even partial site cleanup; a history of negotiations with generator and transporter responsible parties which had not yielded a realistic prospect for site cleanup; and, the high probability that Superfund could not be used to clean up the site because the State of Indiana had (and still has) insufficient funds to cost share 50 percent of remedial planning and response actions for the site.

In a series of meetings during August 1982 involving EPA, DOJ, the State of Indiana and others, it became obvious that a timely site cleanup at Seymour could be achieved only if a concerted inter-governmental effort was initiated, placed on an expeditious time schedule and managed effectively. Rita Lavelle, at that time the Assistant Administrator for the OSWER, and other decision-makers decided to pursue negotiations with responsible parties on an expeditious schedule which targeted settlement for litigation for October 1982.

There were many factors that were considered in the decision to move quickly with enforcement actions at Seymour. Each factor was discussed and evaluated during the course of meetings concerning the Seymour site. No single factor was the reason for the decision to move expeditiously with negotiations in the summer and fall of 1982. These factors included:

HEALTH AND ENVIRONMENTAL PROBLEMS

The Seymour Recycling Corporation site was among the most serious health and environmental problems in the Midwest. The area immediately surrounding the site is farmland. However, the site was located near a community of 13,000 people; residential dwellings with shallow drinking water wells were located 3000 feet northwest of the site; various industries nearby used deep water supply wells which yielded up to 75,000 cubic meters of water daily.

PUBLIC CONCERN ABOUT SITE

A heightened public awareness of the human health and environmental problems presented by the Seymour site was demonstrated by continued press attention locally and nationally and communications between Seymour citizens, municipal officials and State of Indiana officials and EPA. There was concern that despite EPA emergency response efforts at Seymour, hazardous substances would continue to be released from the site to affect ground-water supplies in the area. In addition, there was a real concern for the fire and explosion hazard presented by the site and the potential danger to the community of Seymour, Indiana.

STATE COST SHARE

Although removal actions, fully funded by the Superfund, could be used to respond to emergencies at the Seymour site, the large cost of the surface cleanup and the limitations placed on removal actions by statute made it difficult to fully address the surface problems through the removal authority. The only alternative for fund-financed cleanup was to develop a remedial action, which, by statute, required a 50 percent State share.

The State of Indiana was unable to immediately fund their 50 percent cost share required under CERCLA for remedial response actions at Seymour under Superfund. The Indiana State Board of Health, Attorney General's Office and the Governor's office had on several occasions met with EPA officials, discussed the State's lack of financial capacity, and urged EPA to vigorously pursue enforcement measures to promote private party response for Seymour. The State was planning to initiate a Superfund type revenue-producing tax on chemicals but fees from this tax were not due until March 31, 1983. State funding sufficient for significant remedial response would not have been available until a year later, 1984.

PROJECT DURATION

The surface cleanup at Seymour was expected to be a project which would take approximately one year to accomplish. Given the length of the surface cleanup project and the delays to removal possible during the winter months because of freeze conditions at the Seymour site, it was necessary that work begin in advance of the first winter freeze of 1982 in order to ensure that imminent hazard conditions at the site were sufficiently abated as soon as possible. Unless settlement for surface cleanup was reached expeditiously, it was possible that work could not commence until late spring of 1983.

CONCERN BY ELECTED OFFICIALS

Both Senator Lugar and Governor Orr of Indiana had expressed serious concerns that unless enforcement or response actions were taken expeditiously by the EPA, conditions at Seymour would continue to deteriorate with possible adverse consequences for the people at Seymour, Indiana. These concerns were expressed in correspondence and other direct communications to the EPA Administrator and Assistant Administrator for OSWER at various times during 1982. However, unless action was taken under enforcement authorities, i.e. negotiations with responsible party generators coupled with administrative or judicial enforcement action, site cleanup could be delayed for an indefinite period of time. Both elected officials, therefore, urged EPA to pursue enforcement measures for site cleanup expeditiously.

CERCLA AMENDMENT

Congressman Fithian of Indiana was also most aware of the Seymour site problems. Partly in response to this situation, he had developed and promoted an amendment to § 104(c)(3) of CERCLA which would have applied the 50 percent state cost share reqirement only to sites that were owned and primarily operated by the state or any political subdivision at the time of disposal of hazardous substances by the state or any political subdivision. The impact of the amendment was to increase the number of sites eligible for a 90/10 cost sharing arrangement. In order to alleviate the need for the amendment, the Assistant Administrator for OSWER encouraged an expeditious resolution of the Seymour problem through enforcement action.

Together, these factors provided the impetus within EPA to pursue settlement negotiations on an expeditious schedule in the fall of 1982. By late August 1982 EPA made the decision to continue enforcement action at Seymour on several tracks. These actions were undertaken in full coordination with all governmental entities including Indiana and the involved municipalities.

FIRST TRACK: IBM NEGOTIATION

The first track involved negotiations with the small group of responsible parties headed by IBM for surface cleanup. Negotiation sessions were scheduled and held during September and October 1982. Initially, a scheduled deadline of October 1, 1982 was established for reaching an acceptable agreement with this group for surface cleanup. A settlement agreement was, in fact, announced about four weeks later, on October 26, 1983.

SECOND TRACK: TECHNICAL NEGOTIATIONS

The second track involved discussions with the technical representatives of the responsible party firms in the IBM group to work out project details of the surface cleanup which would be sufficient to abate imminent hazard conditions presented by the surface wastes at Seymour. Chem Waste Management, Inc. had prepared a technical proposal which was to serve as a basis for this negotiation track. This document had been preliminarily reviewed by EPA during August 1982 and determined to be a satisfactory vehicle for initiating the technical proposal negotiations.

THIRD TRACK: PRORATA SETTLEMENT PROPOSAL

The third track involved the pro rata non-negotiable settlement proposal to be made by the governments to all 368 companies which at this point had been identified as potentially responsible parties at the Seymour site. The pro rata settlement offer provided companies the opportunity to "cash out" on a pro rata basis, i.e. in return for a cash contribution, calculated by considering their respective proportion of all the hazardous wastes shipped to the Seymour site and the $30 million government estimate for the costs of total site cleanup, the companies would receive a covenant not to sue from the federal, state, and municipal governments.

FOURTH TRACK: LITIGATION

The fourth track involved preparation for litigating against non-settlers for the balance of the cleanup at Seymour. The cleanup negotiations with the IBM group, if successful, would address the surface problems at the site. The pro rata settlement track was not anticipated to provide fully the balance of the estimated subsurface cleanup costs at Seymour. Therefore, it was necessary to draft an amendment to the pending civil action in federal district court which would add non-settling defendants against which the government could pursue the balance of cleanup.

THE RESULTS

The IBM group negotiations culminated in the signing of a consent decree on October 26, 1982 by 24 generator and transporter responsible parties and the federal, state and municipal governments. The consent decree was immediately lodged in the federal district court in Indianapolis. Following two court hearings at which the public, including all identified responsible parties, were given an opportunity to be heard, the court approved and entered the consent decree on December 15, 1982. In a memorandum issued that day the court found that the consent decree was in the public interest and met the judicial tests of legality, fairness and reasonableness required in such documents. Surface cleanup began immediately by Chem Waste Management, Inc. pursuant to a technical proposal approved by the governments concurrently with the consent decree.

Beginning October 28, 1982 the government sent out covenants not to sue to 368 companies associated with the Seymour site. In exchange for the covenant not to sue, certain settling companies agreed to pay their proportionate share of total cleanup costs. To date, over 204 companies have accepted the pro rata offer pledging a total of $5.4 million.

On December 9, 1983 the government filed an amended civil action in federal district court adding 55 non-settling defendants and claims under the amended RCRA statute and CERCLA. The amended complaint is necessary to afford full relief in the case and seeks remedies to conditions which may contribute to or present an imminent hazard at the site including cleanup of all remaining contamination in the soil and groundwater on and off-site. The government also seeks recovery for natural resource damages, recovery of all funds expended by it for all cleanup, removal and remedial actions and other enforcement activities related to the site and its costs of suit.

CURRENT SITE STATUS

Surface cleanup activities at the site are virtually completed by Chem Waste Management, Inc. In addition, a remedial investigation/feasibility study for evaluation of remedies for subsurface cleanup is in underway.

DISCUSSION OF CRITICISMS ON THE SETTLEMENTS

Since the events of the fall of 1982 relating to the Seymour settlements, this subcommittee in addition to other congressional committees have investigated all aspects of the Seymour case. The investigations have been initiated as a result of charges from various groups that the settlement was motivated and expeditiously pursued on an "election track" because of an intent to affect the outcome of political elections in Indiana; that the consent decree settlement was unfair to certain responsible parties who were not permitted to participate in the IBM group; and, that the surface cleanup settlement was a "sweetheart deal" because the IBM group settlers were able to secure cleanup at approximately one-half the government's estimated costs.

The Agency position is that the settlements at Seymour, as well as the strategies and litigation relating to total cleanup of the site, are consistent with CERCLA congressional intent, are in the public interest, and represent the best deal that the government could have obtained given the history, circumstances and complexities surrounding the Seymour case. I would now like to address directly certain key issues and criticisms raised by this subcommittee and others respecting EPA's enforcement actions at Seymour.

TOTAL RELEASE

Total Release from Legal Liability—The consent decree settlement provides a covenant not to sue, execute judgment or take any civil judicial or administative action with respect to surface cleanup and soil and groundwater cleanup at the Seymour site. Generally, it is not EPA policy to provide such full releases in return for only a portion of site cleanup by responsible parties, except in such extraordinary circumstances as were presented by the Seymour site. The surface cleanup settlement could not be achieved without a full release to the 24 responsible parties which were agreeing to address one-half the estimated Seymour site problems and represented one-half of the hazardous wastes shipped to Seymour.

The Seymour surface cleanup settlement presents certain safeguards which were considered sufficient to protect the government's and the public's interest in site cleanup at Seymour. These safeguards included the following:

A bond of $15 million, twice the cost of the CWM surface cleanup action, sufficient to guarantee that surface cleanup would be accomplished in any event;

CWM was an experienced firm with management and facilities capable of handling a surface cleanup of this magnitude;

Insurance sufficient to protect all parties of interest against personal injury, property damage and sudden environmental impairment;

There was a large pool of non-settlers who would remain candidates for litigation to seek, through judicial enforcement mechanisms, the balance of the cleanup at Seymour.

In summary, the total release was the principal factor favoring the settlement for surface cleanup at Seymour. Without it, no cleanup was possible. Such releases are not a part of EPA present policy as expressed in EPA's formal settlement principles set forth in October 1983. It is very possible, however, that in similar circumstances, EPA would do the same.

ADEQUACY OF SURFACE CLEANUP PROPOSAL

Technical adequacy of the surface cleanup—Certain questions have been raised regarding the technical soundness of the surface cleanup activities. The Chem Waste Management, Inc. surface removal efforts included the following:

Preparation of the site for waste removal which included road construction, construction of a drum crushing center, and placement of decontamination units, mobile laboratories and office trailers;

Sealing of all on site wells and underground piping running through the site;

Analysis and preparation of hazardous wastes for transport and disposal;

Transport of all hazardous wastes and remaining debris and disposal in CWM's disposal facilities in accordance with RCRA regulations;

Removal of soil under drums and tanks and visibly contaminated soil to a depth of one foot. This involved approximately 70 percent of the surface of the site

Comprehensive site air monitoring during removal activities;

The State of Indiana participated fully in technical negotiations for site surface cleanup. Further, the surface cleanup action was equivalent to any that may have been taken by EPA under Superfund. On-scene oversight of CWM actions was provided on a continuous basis by EPA and Indiana. RCRA regulatory compliance was required in all appropriate phases of the removal activities. EPA protocols and procedures for waste characterization and analysis were required. Access to all records and regular reporting were also required.

CHEM WASTE MANAGEMENT, INC., CONTROVERSY

Chem Waste Management, Inc.—This firm was under investigation for violations of RCRA regulations at facilities in other states. For these and other reasons, EPA's acceptance of this firm as the cleanup contractor was criticized by certain parties. At the time of settlement, CWM was a reputable firm with broad experience in hazardous waste management. No administrative or judicial action had been initiated against the firm by any governmental entity. The IBM group had engaged CWM early in the settlement process, allowing the firm to acquire familiarity with the technical and environmental problems presented at Seymour and the settlement offer was contingent on CWM doing the work. In response to EPA's concerns, the consent decree provided a $15 million bond ensuring that the work would be accomplished in the event of any default by CWM. The surface cleanup action by CWM was therefore ensured by the careful development of the technical proposal through the negotiation process, the background and experience of CWM, and the financial guarantees provided by the consent decree.

RESPONSIBLE OFFICIALS

Decision-Making Authorities—The Seymour settlement has been criticized as one achieved through the haste of an expeditious strategy developed to "deliver" before the Indiana political elections of November 1982. It has been characterized as an expeditious strategy demanded by a single decision-maker at the Assistant Administrator level at EPA. In point of fact, the settlement required the close coordination and agreement of decision-makers at high management levels in several federal, state, and municipal governments with a considerable interest in the outcome of the Seymour strategy. The agencies and individual decision-makers, all of whom had knowledge of the strategies and terms of the Seymour settlement, included:

DOJ—Carol Dinkins, the Assistant Attorney General for Land and Natural Resources and Sara Barker, the U.S. Attorney for the Southern District of Indiana, were both signatories to the consent decree.

Indiana—Robert D. Orr, the Governor of the State, signed on behalf of the various State departments with responsibility for action at Seymour. The consent decree was also approved by Linley E. Pearson, the Attorney General of Indiana.

EPA—Robert Perry, the Associate Administrator for Legal and Enforcement Counsel, and Val Adamkus, EPA Region V, Regional Administrator were both signatories of the consent decree. Rita Lavelle, Assistant Administrator for Solid Waste and Emergency Response, participated in decision-making.

Municipal Corporations—The President and Counsel for the Board of Aviation Commissioners of the City of Seymour, Indiana and the Mayor of the City of Seymour, Indiana all eventually signed the consent decree. Of course, other State officials, EPA and DOJ staff participated in and influenced the process of the Seymour settlement strategy.

UNFAIRNESS

"Unfairness" of the Consent Decree Settlement—Various responsible parties at Seymour have complained that the settlement was unfair because they were precluded from participating in the IBM group. While EPA was aware that certain parties had been excluded from the IBM group, EPA did not dictate which party was in or out. EPA's position expressed on several occasions to the settlement group was that the Agency was willing to negotiate terms of a surface cleanup proposal if it was made by a group of parties representing not significantly more than 50% of the hazardous wastes contributed to the site. Neither EPA nor any other government party to the settlement influenced either the responsible party composition of the settling group or the contributions of individual members to the Trust Fund established to fund the surface cleanup project.

"SWEETHEART DEAL"

"Sweetheart Deal"—A particularly widespread criticism of the Seymour surface cleanup settlement was that it represented a "sweetheart deal" to the settlers since it allowed them to settle for a cost one-half of the government's estimated cost for surface cleanup at Seymour (approximately $7.5 million). This criticism misstates the facts. In fact, EPA negotiated with the IBM group for surface cleanup at the site, a project representing one-half of the total cleanup rather than one-half of the total cost necessary for restoration of the Seymour site. The government's estimated cost of $15 million was based on worst case assumptions designed to ensure that actual costs would not exceed this figure. Simply stated, the IBM group was able to contract for a surface cleanup of the site costing them as a group less than the government's estimate of $15 million. Non-parties to the IBM group were given a one-time opportunity to settle by paying their pro rata share of the other half of the site subsurface work, which EPA estimated to be $15 million. Under these circumstances, the surface cleanup settlement cannot be viewed as an unfair "sweetheart deal."

In this statement, based on information provided to me by others and my personal knowledge, I have attempted to provide a history of EPA's settlement strategy respecting the Seymour, Indiana hazardous waste facility. In addition, I have addressed key criticisms respecting that strategy which have been repeated many times since the fall of 1982. The panel is prepared to answer any questions you may have concerning any aspect of the governments' activities at the Seymour site.

Mr. **Levitas.** Thank you very much, Mr. Lucero. Has anybody come up with that figure of what the cash-out sum would be, before I recognize Ms. Walker?

Mr. **Lucero.** They are still working on it, sir. They will get it to you as soon as they can.

Mr. **Levitas.** Ms. Walker, welcome.

Ms. **Walker.** My name is Mary Walker. Since August 1982, I have been a Deputy Assistant Attorney General in the Land and Natural Resources Division of the Department of Justice.

As such, my testimony here today is based on information and knowledge of others, as well as my own, and much of it is not from my own personal knowledge, but is the collective knowledge of the various staff and other members of the Lands Division of the Department.

My responsibilities include the management of three litigation sections of the Division. The Environmental Enforcement Section, which conducts the Division's hazardous waste litigation, falls within my purview.

As Mr. Lucero indicated, I am accompanied today by Stephen D. Ramsey, Chief of the Environmental Enforcement Section. Mr. Ramsey directly supervises the section's efforts to enforce hazardous waste and other environmental legislation. Also present is Charles Goodloe, Jr., assistant U.S. attorney for the southern district of Indiana. Mr. Goodloe conducts litigation on various Federal matters in Indiana.

We are pleased to testify before the subcommittee today in its hearings on Government efforts to effect a remedy at a hazardous waste site operated by the Seymour Recycling Corp. near Seymour, IN. We wish to assure the subcommittee and the public that the Justice Department is fully committed to vigorous enforcement of environmental legislation.

The activities of the Environmental Enforcement Section demonstrate that commitment. In fiscal year 1983, the section filed nearly 200 enforcement actions on behalf of the EPA, including 39 hazardous waste cases.

During that period, settlements were achieved in 17 hazardous waste cases, resulting in cleanup money totaling nearly $70 million. The section also received favorable rulings on open issues of law in several cases, including *United States* v. *Chem Dyne Corporation* in the southern district of Ohio, and *United States* v. *Price* in the district of New Jersey.

The section's environmental crimes unit has obtained indictments against 50 defendants, and has convicted 33, since its inception in 1982.

Against this background, the Justice Department counts the results achieved thus far in the Seymour litigation among its significant accomplishments. The Department today intends to clarify its role in the *Seymour* case, the significance of the results achieved, and why the result is consistent with a vigorous enforcement policy and the best interests of the public.

As the subcommittee knows, the EPA concluded in 1980 that conditions at the Seymour site warranted Federal intervention and requested the Justice Department to initiate litigation to support its efforts to clean up the site. Under the memorandum of understanding between the Department of Justice and the EPA, the Land and Natural Resources Division handles litigation for EPA, subject to prescribed limitations.

The Division seeks to maintain a cooperative relationship with the EPA, balancing due deference to the client agency's technical expertise against the Division's responsibility for exercising independent litigation judgment. The Division's ultimate objective is to protect the public interest through expeditious and successful adjudication or through unambiguous, enforceable settlement agreements.

The Division's review of the Seymour referral revealed that the Government faced a difficult situation. In 1980, the site was estimated to contain 20,000 tons of hazardous materials, deposited there by hundreds of generators, in approximately 60,000 drums and 98 bulk storage tanks. The site had also experienced fires and explosions and posed a threat to the public health and the environment of the surrounding area.

Under the then-existing laws, no Superfund existed to remedy the site. The waste generators' legal responsibility for cleanup was undecided under existing law. Given these circumstances, the Government elected to sue the Seymour site operators immediately and then to identify and contact generators in the hope that a settlement could be reached that would lead to a voluntary cleanup of the site.

The passage of the Comprehensive Environmental Response, Compensation, and Liability Act [CERCLA] in December 1980 strengthened the Government's position to some degree. However, the Superfund established by the CERCLA legislation could not be applied to the Seymour site because the State of Indiana was unable to provide its share of the cleanup funds, a share required by section 104 of the act.

Thus, litigation and negotiation were the only avenues available to the Government to achieve cleanup of the site. As discovery proceeded and discussions with generators commenced, it became clear that if total cleanup of the site was solely dependent upon resolution of the lawsuit, such might well prove to be protracted, difficult, and expensive for the Government.

Following the enactment of CERCLA, the Government identified generators and met with them individually to discuss their willingness to participate in funding cleanup of the site. In October 1981, a generator group suggested the possibility of a settlement that would result in a full cleanup. Negotiations proceeded through June 1982, culminating in a final offer from the group that the Government found unacceptable.

Thus, in the early summer of 1982, the Government faced the following situation: Settlement negotiations had collapsed. The Superfund could not be used to pay for site cleanup and the Government was engaged in prolonged litigation that in all likelihood could not produce a court-ordered cleanup for at least 2 and perhaps as many as 5 years in the future.

Faced with this situation, the Government sought ways to eliminate the immediate hazards of the Seymour site without compromising the ultimate objective of total site cleanup by responsible parties. While the Government continued to approach settlement discussions flexibly, it remained committed to three important principles throughout the course of its negotiations: First, the Government would negotiate with any generator, or group of generators, that came forward, genuinely interested in cleaning up the site; second, the Government would settle only on condition that the generator, or group of generators, contributed to the cleanup effort, either through funding or undertaking the work, in a proportion equal to or greater than its volumetric share of the wastes shipped to the site; and third, the Government would not enter into any agreement that would compromise the ultimate objective of total site cleanup by responsible parties.

To this end, in June 1982, at the settlement meeting in which it rejected the generator group's offer, the Government announced its future course of action in the case: The Government stated that it would make a settlement offer in September 1982 to all generators. Each generator would be offered a covenant not to sue in exchange for the party's pro rata share of the total cleanup cost, then estimated to be $30 million. The Government further stated that it would give all parties 30 days to consider the settlement before filing suit against some or all of the nonsettlers which it would do in October 1982. Finally, the Government stated that it would continue to consider alternate settlement proposals from any generator or group of generators.

Immediately following the June meeting, a group of generators offered to clean up the surface of the site in exchange for a full release from liability. Given the nonavailability of any other expeditious method of achieving cleanup, the Government agreed to consider such a proposal, provided that any agreement with the group would not compromise the ultimate objective of total site cleanup by the remaining responsible parties.

Simultaneously, the Government moved forward with its plan offering pro rata settlements to all generators, based on each generator's proportionate share of the $30 million estimated cleanup cost. As a part of this strategy, the Government sent letters to all generators inviting them to a meeting on September 9 and 10, 1982, in Indianapolis, at which the Government would describe its position on settlement. Thereafter, the Government proceeded with these parallel options—surface cleanup and pro rata settlement.

In October 1982, the Government successfully negotiated a proposed settlement agreement for cleanup of the surface. Under the terms of the agreement, 24 companies that generated an estimated 50 percent of the wastes shipped to the site would undertake and guarantee, regardless of cost, a surface cleanup—work that represented 50 percent of the estimated total cleanup cost.

This settlement agreement fully comported with the three principles set forth by the Environmental Enforcement Section, which I articulated earlier.

But much more importantly, the settlement agreement met the pressing needs for surface cleanup, and it did so under terms highly favorable to the Government. The settlement agreement provided for an immediate surface remedy, eliminating the imminent hazards posed by the surface conditions and preventing further subsurface contamination.

The cleanup was guaranteed, as I indicated, regardless of cost, by the responsible generators, dispelling concerns that the Government might be held responsible for cost overruns. Among other terms, the agreement provided for Government oversight of the cleanup, air monitoring, liability insurance to protect the public, preservation of relevant documents, and, through its consent decree format, enforceability in the courts. Additionally, the agreement assured that total cleanup could be accomplished by pursuit of the remaining responsible parties.

At the same time that the Government was negotiating the proposed consent decree with the group of 24 generators, it had also moved forward with the pro rata offer to all generators. This offer was embodied in a covenant not to sue. Both the proposed consent decree and the convenant not to sue were finalized in the end of October 1982.

As is our procedure in approving all EPA settlements, I reviewed the recommendation of the EPA, and of the career staff and management of the Environmental Enforcement Section and the U.S. Attorney's Office.

It was their recommendation that the consent decree and the covenants not to sue be approved. Based upon this recommendation and my review, I, in turn, recommended acceptance to the Assistant Attorney General, Carol Dinkins, who approved the documents on behalf of the Justice Department.

On October 26, 1982, the proposed consent decree was filed with the court. On October 28, 1982, the covenants not to sue were mailed to most generators. Several late ones were mailed on November 5, and November 19.

Judge Steckler, of the U.S. District Court for the Southern District of Indiana, reviewed the consent decree in November 1982. After conducting two hearings on the terms of the decree, and considering the testimony from witnesses for the United States and the State of Indiana, and the statements of local residents, generators who participated in the settlement and generators who did not, the Judge approved the decree on December 15, 1982, concluding, and I quote: "the surface cleanup authorized by this Decree is a very valuable and important part of the overall cleanup of the Seymour Site, which is in the public interest and particularly in the interest of those citizens affected by the Site."

Judge Steckler further stated, and I quote: "a prompt cleanup of the surface coupled with analysis of the potential ground water contamination is essential to the protection of public health and the environment."

He went on to note:

> Prior to the cleanup plan embodied in the Consent Decree, no plan ensuring full cleanup of the surface had been forthcoming from any party to the litigation or any other persons, other than a temporary, emergency action by EPA. No objecting party could assure the Court that the surface cleanup could promptly be accomplished through any other mechanism than the Consent Decree. Government counsel represented to the Court that previous negotiations for cleanup had proved unfruitful. The oral and written representations of counsel for both objecting parties and counsel for one of the defendants which are parties to the decree confirm the past failure of negotiations.

Judge Steckler's approval of the consent decree was recorded in a carefully considered and thorough opinion in which he found the terms of settlement to be consistent with applicable law, fair, reasonable, and in the public interest. Subsequent events have confirmed Judge Steckler's findings.

Cleanup of the surface contamination is virtually complete and the last of the drums was removed from the site and disposed of last month.

Approximately 200 generators accepted the Government's pro rata settlement offer, yielding nearly $5 million in cleanup funds. These funds are being placed in an interest bearing account in the registry of the court and will be used to clean up contaminated soils and ground water, the next phase of the overall cleanup program for Seymour.

The second phase of the cleanup program is already under way. Now that the imminent hazards posed by the site have been eliminated with the removal of the source of contamination, an exhaustive analysis of subsurface contamination is currently being conducted at the site. Drilling has not started, but other elements of the study have.

The results of these tests will provide the information needed to devise a remedial plan. Additional testing of water wells in the area is ongoing to assure local residents that their water supplies have not been contaminated.

Concurrently, the United States has moved against generators who have refused to settle. On December 9, 1983, the United States filed a motion to amend the existing complaint to add 55 more defendants to the enforcement action. Inmont is being dropped—they are a subsidiary of United Technology, a consent decree party. The Government thus reasonably expects that the full cost of the subsurface cleanup will be borne by responsible parties, either through settlement or as a result of litigation.

Throughout the course of the *Seymour* case, the objective of the Justice Department has been to obtain from the responsible parties, as expeditiously as possible, an unambiguous, enforceable commitment to clean up the Seymour site. This objective alone has guided the Department's handling of the case.

The Justice Department believes that the Seymour surface settlement was a major and necessary step toward total cleanup. In achieving this settlement, and subsequent settlements as well, the Department has met its obligations to EPA and to the public.

I will be happy to address the subcommittee's inquiries on behalf of the Justice Department, to the extent that my knowledge and participation in the case permits. Stephen Ramsey and Charles Goodloe, who are more familiar with the details of the litigation and settlement negotiations, also stand ready to respond to your questions.

Thank you.

[The prepared statement of Ms. Walker follows:]

PREPARED STATEMENT OF MARY L. WALKER

Ny name is Mary L. Walker. Since August 1982, I have been Deputy Assistant Attorney General of the Land and Natural Resources Division of the Department of Justice. My responsibilities include the management of three litigation sections of the Division. The Environmental Enforcement Section, which conducts the Division's hazardous waste litigation, falls within my purview.

I am accompanied today by Stephen D. Ramsey, Chief of the Environmental Enforcement Section. Mr. Ramsey directly supervises the Section's efforts to enforce hazardous waste and other environmental legislation. Also present is Charles Goodloe, Jr., Assistant United States Attorney for the Southern District of Indiana. Mr. Goodloe conducts litigation on various federal matters in Indiana.

We are pleased to testify before the Subcommittee today in its hearings on Government efforts to effect a remedy at a hazardous waste site operated by the Seymour Recycling Corporation near Seymour, Indiana. We wish to assure the Subcommittee and the public that the Justice Department is fully committed to vigorous enforcement of environmental legislation. The activities of the Environmental Enforcement Section demonstrate that commitment. In fiscal year 1983, the Section filed nearly 200 enforcement actions on behalf of the EPA, including 39 hazardous waste cases. During that period, settlements were achieved in 17 hazardous waste cases, resulting in cleanup money totalling nearly 70 million dollars. The Section also received favorable rulings on open issues of law in several cases, including *United States* v. *Chem Dyne Corp.*, No. C-1-82-840 (S.C. Ohio Oct. 11, 1983) and *United States* v. *Price*, No. 80-4104 (D.N.J. July 28, 1983). The Section's Environmental Crimes Unit, has obtained indictments against 50 defendants, and has convicted 33, since its inception in 1982.

Against this background, the Justice Department counts the results achieved thus far in the Seymour litigation among its significant accomplishments. The Department today intends to clarify its role in the *Seymour* case, the significance of the result achieved, and why the result is consistent with a vigorous enforcement policy and the best interests of the public.

As the Subcommittee knows, the EPA concluded in 1980 that conditions at the Seymour site warranted federal intervention and requested the Justice Department to initiate litigation to support its efforts to clean up the site. Under the Memorandum of Understanding between the Department of Justice and the EPA, the Land and Natural Resources Division handles litigation for EPA, subject to prescribed limitations. The Division seeks to maintain a cooperative relationship with the EPA, balancing due deference to the client agency's technical expertise against the Division's responsibility for exercising independent litigation judgment. The Division's ultimate objective is to protect the public interest through expeditious and successful adjudication or through unambiguous, enforceable settlement agreements.

The Division's review of the Seymour referral revealed that the Government faced a difficult situation. In 1980, the site was estimated to contain 20,000 tons of hazardous materials, deposited there by hundreds of generators, in approximately 60,000 drums and 98 bulk storage tanks. The site had also experienced fires and explosions and posed a threat to the public health and the environment of the surrounding area.

Under the then-existing laws, no "Superfund" existed to remedy the site. The waste generators' legal responsibility for cleanup was undecided under existing law. Given these circumstances, the Government elected to sue the Seymour site operators immediately and then to identify and contact generators in the hope that a settlement could be reached that would lead to a voluntary cleanup of the site.

The passage of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") in December 1980 strengthened the Government's position to some degree. However, the "Superfund" established by the CERCLA legislation could not be applied to the Seymour site because the State of Indiana was unable to provide its share of the cleanup funds, a share required by Section 104 of the Act. Thus, litigation and negotiation were the only avenues available to the Government to achieve cleanup of the site. As discovery proceeded and discussions with generators commenced, it became clear that if total cleanup of the site was solely dependent upon resolution of the lawsuit, such might well prove to be protracted, difficult, and expensive for the Government.

Following the enactment of CERCLA, the Government identified generators and met with them individually to discuss their willingness to participate in funding cleanup of the site. In October 1981, a generator group suggested the possibility of a settlement that would result in a full cleanup. Negotiations proceeded through June 1982, culminating in a final offer from the group that the Government found unacceptable.

Thus, in the early summer of 1982, the Government faced the following situation: Settlement negotiations had collapsed. The Superfund could not be used to pay for site cleanup and the Government was engaged in prolonged litigation that in all likelihood could not produce a court-ordered cleanup for at least two or perhaps as many as five years in the future.

Faced with this situation, the Government sought ways to eliminate the immediate hazards of the Seymour site without compromising the ultimate objective of total site cleanup by responsible parties. While the Government continued to approach settlement discussions flexibly, it remained committed to three important principles throughout the course of its negotiations: first, the Government would negotiate with any generator, or group of generators, that came forward, genuinely interested in cleaning up the site; second, the Government would settle only on condition that the generator, or group of generators, contributed to the cleanup effort, either through funding or undertaking the work, in a proportion equal to or greater than its volumetric share of the wastes shipped to the site; and third, the Government would not enter into any agreement that would compromise the ultimate objective of total site cleanup by responsible parties.

To this end, at the June 1982 settlement meeting in which it rejected the generator group's offer, the Government announced its future course of action in the case: the Government stated that it would make a settlement offer in September 1982 to all generators. Each generator would be offered a covenant not to sue in exchange for that party's pro rata share of the total cleanup cost, then estimated at that time to be 30 million dollars. The Government further stated that it would give all parties 30 days to consider the settlement before filing suit against some or all of the non-settlers which it would do in October 1982. Finally, the Government stated that it would continue to consider alternate settlement proposals from any generator or group of generators.

Immediately following the June meeting, a group of generators offered to clean up the surface of the site in exchange for a full release from liability. Given the nonavailability of any other expeditious method of achieving cleanup, the Government agreed to consider such a proposal, provided that any agreement with the group would not compromise the ultimate objective of total site cleanup by the remaining responsible parties. Simultaneously, the Government moved forward with its plan offering "pro-rata" settlements to all generators, based on each generator's proportionate share of the 30 million dollar estimated cleanup cost. As a part of this strategy, the Government sent letters to all generators inviting them to a meeting on September 9-10, 1982, in Indianapolis, at which the Government would describe its position on settlement. Thereafter, the Government proceeded with these parallel options—surface cleanup and pro rata settlement.

In October 1982, the Government successfully negotiated a proposed settlement agreement for cleanup of the surface. Under the terms of the agreement, twenty-four companies that generated an estimated fifty percent of the wastes shipped to the site would undertake and guarantee, regardless of cost, a surface cleanup—or work that represented fifty percent of the estimated total cleanup cost. The settlement agreement fully comported with the three principles set forth by the Environmental Enforcement Section. But much more importantly, the settlement agreement met the pressing needs for surface cleanup, and it did so under terms highly favorable to the Government. The settlement agreement provided for an immediate surface remedy, eliminating the imminent hazards posed by the surface conditions and preventing further sub-surface contamination. The cleanup was guaranteed, as I indicated, regardless of cost, by the responsible generators, dispelling concerns that the Government might be held responsible for cost overruns. Among other terms, the agreement provided for Government oversight of the cleanup, air monitoring, liability insurance to protect the public, preservation of relevant documents, and through its consent decree format, enforceability in the courts. Additionally, the agreement assured that total cleanup could be accomplished by pursuit of the remaining responsible parties.

At the same time that the Government was negotiating the proposed consent decree with the group of 24 generators, it had also moved forward with the pro rata offer to all generators. This offer was embodied in a covenant not to sue. Both the proposed consent decree and the covenant not to sue were finalized in the end of October 1982.

As is our procedure in approving all EPA settlements, I reviewed the recommendation of the EPA, and of the career staff and management of the Environmental Enforcement Section and the United States Attorney's Office. It was their recommendation that the consent decree and the covenants not to sue be approved. Based upon this recommendation and my review, I, in turn, recommended acceptance to the Assistant Attorney General, Carol Dinkins, who approved the documents on behalf of the Justice Department. On October 26, 1982, the proposed consent decree was filed with the court. On October 28, 1982, the covenants not to sue were mailed to all generators.

Judge Steckler, of the United States District Court for the Southern District of Indiana, reviewed the consent decree. After conducting two hearings on the terms of the decree, and considering the testimony from witnesses for the United States and the State of Indiana, and the statements of local residents, generators who participated in the settlement and generators who did not, the Judge approved the decree on December 15, 1982, and stated: "The surface cleanup authorized by this Decree is a very valuable and important part of the overall cleanup of the Seymour Site, which is in the public interest and particularly in the interest of those citizens affected by the Site."

United States v. *Seymour Recycling Corp.*, Civ. No. IP 80-457-C mem. op. at 6 (S.D. Ind. Dec. 15, 1982). Judge Steckler further stated, "a prompt cleanup of the surface coupled with analysis of the potential groundwater contamination is essential to the protection of public health and environment." Id. at 15. He went on to note: "[P]rior to the clean-up plan embodied in the Consent Decree, no plan insuring full cleanup of the surface had been forthcoming from any party to the litigation or any other persons, other than a temporary, emergency action by EPA. No objecting party could assure the Court that the surface cleanup could promptly be accomplished through any other mechanism than the Consent Decree. Government counsel represented to the court that previous negotiations for cleanup had proven unfruitful. The oral and written representations of counsel for both objecting parties and counsel for one of the defendants which are parties to the decree confirm the representations of counsel for both objecting past failure of negotiations." Id. at 16.

Judge Steckler's approval of the consent decree was recorded in a carefully considered and thorough opinion in which he found the terms of settlement to be consistent with applicable law, fair, reasonable, and in the public interest. Subsequent events have confirmed Judge Steckler's findings. Cleanup of the surface contamination is virtually complete and the last of the drums was removed from the site and safely disposed of last month. Approximately 200 generators accepted the Government's pro rata settlement offer, yielding nearly five million dollars in cleanup funds. These funds are being placed in an interest bearing account in the registry of the court and will be used to clean up contaminated soils and ground water, the next phase of the overall cleanup program for Seymour.

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Throughout the course of the Seymour case, the objective of the Justice Department has been to obtain from the responsible parties, as expeditiously as possible, an unambiguous, enforceable commitment to cleanup the Seymour site. This objective alone has guided the Department's handling of the case. The Justice Department believes that the Seymour surface settlement was a major and necessary step toward total cleanup. In achieving this settlement, and subsequent settlements as well, the Department has met its obligations to EPA and to the public.

I will be happy to address the Subcommittee's inquiries on behalf of the Justice Department, to the extent that my knowledge and participation in the case permits. Stephen Ramsey and Charles Goodloe, who are more familiar with the details of the litigation and settlement negotiations, also stand ready to respond to your questions.

Mr. LEVITAS. Thank you very much, Ms. Walker, and we will have a number of questions.

First of all, Mr. Goodloe, did you present the case before the Judge pertaining to the consent order approval?

Mr. GOODLOE. No.

Mr. LEVITAS. Who did that?

Mr. GOODLOE. Mr. Ramsey.

Mr. LEVITAS. Mr. Ramsey presented it at that time. I will get back to that in a moment.

Let me begin, before I get into the substance of the questions, some inquiries, Mr. Lucero, based on information we have recently received concerning this testimony today. I am trying to ascertain whether you or anyone else involved in this matter, either here today, or not here, to your knowledge, within the last 2 weeks, held any group strategy or organizational meetings with respect to preparations for today's hearing.

Mr. LUCERO. There was a conference call to discuss the impending hearing, and there was a meeting the day before the hearing to discuss format, to review the testimony, cover other matters.

Mr. LEVITAS. When was the conference call held, and who were the participants in that conference call?

Mr. LUCERO. Excuse me just a minute.

[Witness confers.]

Mr. LUCERO. The conference call occurred on Monday, December 12. The meeting occurred on Wednesday, December 14. The participants in the meeting included—it included everybody who was introduced to you as a witness.

I should mention one additional person who was not here at the start of my testimony. Richard Emory, Jr., an assistant enforcement counsel in headquarters was there, as well. I could run through the names if you would like me to.

Mr. **Levitas.** I think it would be helpful for the record. You are referring to the meeting held on December 14, I believe.

Mr. **Lucero.** Right. I should mention that people came and left. I was there. Mr. Burack was there for a period of time. Mr. Kyte, Ms. Rekar, Mr. Biros, Ms. Kush. I am only talking—Mr. Brown was not there.

Ms. Walker was there for a period of time. Mr. Ramsey, Mr. Goodloe. Also Chris Grundler, a member of my staff, who I think you have talked to previously, was present. I can't tell you exactly everyone who was on the conference call.

I do not believe that Mr. Emory was on it. I also know that Robert Schaeffer, who was the—who is the regional counsel, is not an assistant, he is the regional counsel for region V, was also on it. I believe. But you may have to ask the other people whether they were present.

The Department of Justice was not on that conference call except through Mr. Minear, who was representing them and participated for all of them.

Mr. **Levitas.** So on the conference call it would be the EPA officials that are listed as witnesses; is that correct?

Mr. **Lucero.** Yes.

Mr. **Levitas.** Where there any others other than the persons from your staff you just identified?

Mr. **Lucero.** Not that I recall.

Mr. **Levitas.** Mr. Ramsey was not a participant in the conference call?

Mr. **Lucero.** No.

Mr. **Levitas.** Again, would you just generally describe the purpose of those meetings, or conference calls?

Mr. **Lucero.** Let me go back just a week before. I was out of the office, but a draft of proposed testimony had been drafted at my request by Dr. Biros. At my request that was circulated to every then-known witness to ask them to review it.

The conference call was, as I recall, to discuss some of the aspects of the testimony, raise issues and then talk about any general issues that we were aware of that we may need to prepare, to review the list of questions that your staff had provided us and to assign responsibilities to compile that information.

There are probably other things I am overlooking.

Mr. **Levitas.** Mr. Ramsey, Ms. Walker, would either of you care to supplement or expand on what Mr. Lucero has testified to?

Ms. **Walker.** I believe that at the meeting on the 14th, Mr. Wallace and Mr. Minear were also in attendance. It would be our normal procedure to have legislative policy people in attendance any time we were preparing for hearings.

Mr. **Lucero.** Mr. Chairman, I have had someone mention there were three other region V people on the phone that I didn't recall. Would you like their names?

Mr. **Levitas.** Yes, I would.

Mr. LUCERO. Greg Vanderloan, Mary Ellen Lynch, and Andy Anderson. I am not sure of their exact titles, but I know they all work in the Waste Management Division.

Mr. LEVITAS. What were the locations involved in that conference call, Mr. Lucero?

Mr. LUCERO. Chicago, Washington. Between the Department of Justice and EPA.

Mr. LEVITAS. There were a number of people involved and obviously that is a portion of the source of our information. My question is, during the course of those meetings, or telephone conversations, did either you, or to your recollection, Mr. Ramsey, and you can speak for yourself on this, if you so desire, discuss beyond the substance of the testimony today, the way in which the individuals involved in those conversations should conduct themselves at this hearing?

Mr. LUCERO. That is a hard question to answer. We went for 2 hours, and we talked about a lot of things. I know that we spent a period of time on the understanding that a number of the people who were coming with us had not been before this subcommittee or others, explaining how the system worked.

We explained the fact that they would be under oath, and we generally described what we knew to be the areas of concern. I don't have any particular recollection——

Mr. LEVITAS. Mr. Ramsey.

Mr. RAMSEY. I do. I think it is an easy question for me to answer. I came late, I suppose around 5:30——

Mr. MOLINARI. Would you pull the microphone closer?

Mr. RAMSEY. I came about 5:30. I had been running around getting a consent decree in *Petro Processors* signed and ready to be entered the next day. My discussions with respect to how people should comport themselves really were addressed to two areas.

One was with respect to anything that got into evidence involving the future case, as I think the committee is aware, we had discussions with Mr. Prolman of your staff. We are concerned lest things be discussed which may be of benefit to the defendants that are left in the lawsuit. We discussed how those kinds of questions should be answered and the procedure that should be followed should questions arise with respect to that.

The second thing that I recommended and reminded folks about is that with respect to matters that were issues of policy—and by policy I don't mean where a memo goes from A to B, I mean with respect to the overall policy of the Agency and Department—that Gene, Mr. Lucero, would be the senior policy person from the Agency present, as would Mary, from the Department, and that folks should generally defer to them with respect to what overall policies in the Department were. They are the people that quite typically, in the normal customary course of both the business of the Congress and business of the executive branch, answer policy level questions.

If that is what the committee is inquiring about, those are the things that I discussed. I might add that those are the kinds of things that normally go on in every discussion in preparation for testimony before Congress which I have been involved in.

Mr. **Levitas**. Well, that is a part of it, Mr. Ramsey. My concerns really go a little bit beyond that, because I am trying to ascertain and assure that we get, as I said early on, forthcoming, free and full discussion of the matters today.

I am trying to find out whether you or Mr. Lucero or anyone else at that meeting suggested that any of the individuals who participated in either the conference call or the meeting should be constrained in any way as to how they respond to questions, or that they should not volunteer any information, or offer us the benefit of their judgments and opinions, that they should answer the questions only as narrowly as necessary and as possible.

Mr. **Ramsey**. I don't think, Mr. Chairman, that that was the substance of the conversations we had with the folks. One of the purposes obviously of any get-together before having to go up and testify before Congress, just as you would if you were going to take a deposition or do any other thing in this kind of context, is to find out what folks are going to say. Find out what is within the collective knowledge of the executive branch.

That is what we were there to do. There was no suggestion, certainly not on my part, nor was it my intent and I didn't hear anybody else suggest that anybody should be anything less than forthcoming and forthright with the committee.

I think folks were admonished to listen to the questions and answer the questions, not to wander all over, given the number of people that were here and how long the hearings were going to take.

But in no regard did anybody who was there while I was there, unless someone is saying that it was me, suggest that anybody be less than forthcoming with the committee. All the people who were there can obviously speak for themselves.

Mr. **Levitas**. Mr. Lucero, would you add anything to that or is that your recollection?

Mr. **Lucero**. Essentially, Mr. Chairman. I would note that there was a discussion that Ms. Fisher led about how to field the questions. It comports with what Mr. Ramsey just said about answering and trying to answer succinctly.

We talked about trying to parcel them out to the right people if that was appropriate so that we could save time and not have a lot of people answer. But I would also note for both Mr. Ramsey's behalf as well as mine and on behalf of Ms. Fisher, that I recall each of us at least one point saying that you are under oath and you are going to have to tell the truth and answer the questions.

Mr. **Levitas**. I understand that. At one point in my life I was an attorney, and did a lot of trial work. I would always in discussing my witness' testimony, particularly—well, in any event, suggest that they be very constrained in responding to the questions. Answer them truthfully. Don't volunteer information. Statements along that line.

But those types of admonishments were in the context of an adversarial relationship between the witnesses, the witnesses involved and the other parties. That is at least hopefully not the type of relationship that should exist when an oversight committee is seeking to probe into a matter with the officials of the executive branch.

Mr. **Ramsey**. Let me offer one other, two other observations, really. There was at some point some question from one of the people who was present as to whether or not any attorney-client privilege existed that could or should be asserted, as to persons—individuals as opposed to the agency.

At that point we told people, no, that we don't go as their personal counsel: That our actions are on behalf of the Department during the course of this investigation; that we act on behalf of, is not privileged in that sense and that there was no indication that people should be quiet.

The other point is that in asking people what their impressions were and what their responses were, I don't know whether Linda or Gene did, but I know that I did admonish folks that if they didn't feel comfortable discussing it with us, that that was fine, they didn't have to. If there is a suggestion from somebody or from the committee that we attempted to tell folks not to come up here and be anything other than forthright and candid, it is a misapprehension and it certainly was not our intention.

The only other thing I can say is that as Gene indicated, people came and went during the course of this meeting, and I didn't get there until late. Ms. Walker and I think Mr. Wallace had gone by that time. It was Mr. Minear and me there for the Department at that point.

Mr. **Levitas**. Well, one last question just to make sure we clear the air on this before proceeding. Mr. Ramsey, did you, or Mr. Lucero, you, either admonish anybody in these discussions or criticize anyone for having information in their files that might disclose or suggest that things were going on in this case that might be inappropriate or personal, perhaps personal, professional reaction to events?

Was there any admonishment, criticism of that?

Mr. **Ramsey**. In other words, did I look at Joe Blow or Jane Doe and say you shouldn't have these notes in your files?

Mr. **Levitas**. That would be one type of example.

Mr. **Ramsey**. No, sir.

Mr. **Levitas**. Mr. Lucero.

Mr. **Lucero**. No, sir.

Mr. **Levitas**. Ms. Walker.

Ms. **Walker**. I didn't hear anything like that, no.

Mr. **Levitas**. Well, again, I really want to clear the air on this thing, because these are—the questions that we are going to be getting into today are so important to this oversight, and Superfund Program, and the way in which it is being administered, that I want to admonish all of the people here to be forthcoming, to share with us your opinions, your best judgment, so that we can avail ourselves of this in order to get to establish the type of record I described earlier in my opening statement. I really don't even know where to begin, whether to start with the fast tracking, or the settlement itself, or just——

Mr. **Molinari**. Mr. Chairman, would you yield for a moment?

Mr. **Levitas**. Yes, I would be happy to yield.

Mr. **Molinari**. Just before you leave that subject, I have one or two questions I would like to ask for continuity's sake. Who initiated the conference call and getting the parties together? I think we should identify that source. Who is the one responsible for starting the process of getting everybody together on one phone and arranging a meeting?

Mr. LUCERO. I had not mentioned this earlier, but Ms. Linda Fisher——

Mr. MOLINARI. I can't hear you, Mr. Lucero.

Mr. LUCERO. Ms. Linda Fisher of the Assistant Administrator's staff.

Mr. MOLINARI. She is the one that initiated it?

Mr. LUCERO. Yes, sir.

Mr. MOLINARI. One other question.

Mr. LUCERO. I should add there was one other person, Ms. Chaille Cooper, from the Office of Legislation.

Mr. MOLINARI. She also initiated it?

Mr. LUCERO. The two together, yes.

Mr. MOLINARI. Was there, during the conference call or meeting that was held on the 14th, any discussion about the role of Mr. Sanderson or, Chemical Waste Management?

Mr. LUCERO. Not that I recall, sir. Let me check. We may have touched on the subject, but I do not think we had any discussion about him.

Mr. MOLINARI. Mr. Ramsey.

Mr. RAMSEY. I don't recollect it. Let me say one other thing if I may, Congressman Molinari, so I can again complete the full cast of characters. Mr. Goodloe was also there. Ms. Walker and Larry Wallace had left. Along with Mr. Minear and myself. Mr. Goodloe was still present in the room until the end of the meeting, which was about 7 o'clock, I think.

Mr. MOLINARI. The meeting started at what time?

Mr. RAMSEY. I think they started around 4, 4:30, and I didn't get there until 5:30 or so.

Mr. MOLINARI. The question is whether you have any recollection of any discussion of Mr. Sanderson.

Mr. RAMSEY. No, sir, I don't believe there was any at that time. Not while I was there. I don't recollect it.

Mr. MOLINARI. Ms. Walker.

Ms. WALKER. No, I don't recall anything like that.

Mr. MOLINARI. Mr. Goodloe.

Mr. GOODLOE. No, I don't recall it.

Mr. MOLINARI. Thank you, Mr. Chairman.

Mr. LEVITAS. Thank you, Mr. Molinari.

Let me start maybe at almost the end, and we will be working forward and backward. I am going to talk about the settlement itself.

Oh, yes, Mr. Wise, do you have a contribution at this point?

Mr. WISE. Well, I am not sure. I am trying to put something together. I would just like to followup on Mr. Molinari's question. It is one thing to initiate trying to pull the parties together, set up the telephone call, whatever. Who conceived the idea of the telephone call, the conference call? Who directed that it be put together and that it take place?

Mr. LUCERO. So far as I know, the same people who initiated it conceived of it as a good idea, along the lines of what Mr. Ramsey said. To get the people together and understand what needed to be done.

Mr. Wise. Those two people have that kind of authority to pull together the Department of Justice as well as your office and order that a call be so done?

Mr. Lucero. I don't know that it involved ordering. It was a suggestion.

Mr. Wise. Who approved the suggestion?

Mr. Lucero. I do not think anybody did.

Mr. Wise. Who concurred? Did you?

Mr. Lucero. I was present at the call. I guess that constitutes concurrence.

Mr. Wise. Well, somebody said all right, let's do it at this time. Who did that?

Mr. Lucero. As far as I know it was scheduled.

Mr. Wise. Who scheduled it?

Mr. Lucero. I think my secretary at Ms. Fisher's request, arranged to make the call.

Mr. Wise. So Ms. Fisher is the prime mover, creator, adviser of this call?

Mr. Lucero. I suppose so, if there was one.

Mr. Wise. Well, I guess I am kind of confused. I haven't been up here that long. Somebody has an idea and sets it in motion in the Agency. I am trying to find out who did that.

How about the staff meeting? Who put that together? Not put it together, who ordered it? Who said there will be a staff meeting?

Mr. Lucero. I think it was, in both the case of the call and in the case of the meeting, that Ms. Fisher and Ms. Cooper said that these were important things to do and they arranged them. That was their normal function.

Mr. Wise. So they told you this would take place?

Mr. Lucero. As far as I recall, yes.

Mr. Wise. That is also true of the Department of Justice?

Mr. Ramsey. The Department of Justice was asked if they wanted to monitor or sit in on the conference call. No one except Mr. Minear, who is staff lawyer in the Policy, Legislation and Special Litigation Section which provides staff work for congressional hearings and legislative analysis and those kind of things, sat in on the conference call. I talked to him briefly afterward. I don't know if Jeff even said anything. But it was a, do you wish to participate? No one ordered us to. It was absolutely voluntary, as was getting together at the meeting.

Mr. Wise. Thank you.

Mr. Levitas. Thank you, Mr. Wise.

I want to, as I say, start off sort of at the end on the settlement itself with the 24 participants. It is your testimony, Mr. Lucero, that it is EPA policy that there would not be a settlement of the Seymour type in the future, and I think the way you phrased it in your testimony is, unless the same extraordinary circumstances existed as existed at Seymour. If you would like, you could refer to that portion of your testimony. Incidentally, your entire testimony, also Ms. Walker's, will without objection be made part of the record.

Mr. LUCERO. Yes, before I answer your question, Mr. Biros has pointed out there was one oversight—let me find it here a second. There is a percentage mistake. On page 18 it said that approximately 70 percent of the surface of the site would have 1 foot of soil removed. That should have been 58 percent.

Mr. LEVITAS. All right.

Mr. LUCERO. The point I think is important to make is that at the time of the *Seymour* settlement, the Agency didn't have a clear policy on that issue. That when the discussion came up in *Seymour*, we recognized it as unique, we hadn't encountered it clearly before. We said after consideration, because of the nature of the case, that we would consider it. However, what I can say that is different today is that the Agency has a policy, and the policy is as we explained earlier that we will not give that kind of full release where the settlement is only for a portion or component of the work to be done. That is the basic policy based on our discussions with the subcommittee, we have tried to articulate that clearly in the draft of the settlement policy, and that is our operational principles. We did reserve to ourselves, and we discussed it with you, Mr. Chairman, that there may be extraordinary circumstances in which a site may present a reconsideration of that basic policy. We tried to keep it very narrow.

What I was suggesting was, at least right now, and it is hard to say how the decisionmaking would play out because to some extent the negotiations are a product of the environment at the time, there is some possibility that the conditions at Seymour would fit within the concept of extraordinary circumstances.

Mr. LEVITAS. Well, your testimony on page 16 says, generally it is not EPA policy to provide such total releases in return for only a portion of site cleanup by responsible parties except in such extraordinary circumstances as were presented by the Seymour site. I referred back to your testimony and that of Mr. Mays before our committee in October. This seems to go even beyond that because you are now saying, as I read it, that if the *Seymour* case came up again today, you would make the same type of settlement; is that correct?

Mr. LUCERO. Let me temper it in the following way. The analysis that we would go through would be different than we went through in October or September of last year. The analysis would be done against the criteria. I have to hedge for this reason. I don't think you approach the problem the same way and you are going to come up with a different interpretation of the results. I agree with you that this seems to be strongly stated. I would have to reserve to myself, until we did it I am not exactly sure how it would turn out.

Mr. LEVITAS. Here is what troubles me about that. The circumstances that I am aware of that existed at Seymour, at least up front, are the fact that you had a site which was a serious threat to public health and the environment; that you had a State that was unwilling to contribute its share of the match necessary to make it a Superfund site; you had a rather striking array of Fortune 500 companies who were potentially responsible parties, and either then or shortly thereafter, defendants in a lawsuit. You had some of the settling parties that you were negotiating with say we are not going to settle unless we get a release from the ground water liability, the phase II. Were there other extraordinary circumstances beyond those I have just listed?

Mr. LUCERO. I think what we are going to have——

Mr. LEVITAS. Let me add one more, that the Governor and the Senator from the State were placing a great deal of pressure on EPA and it was mid-1982, an election year.

Mr. LUCERO. Those were all factors. And I have stated so. But what I would like to explain is that at the time we decided to expedite the work on this case and to really try to organize ourselves more efficiently, the proposal that was on the table so far as I understood from the IBM-led group, was that they had a proposal for a cleanup. The issue about the release wasn't then on the table. The decision that the Agency in conjunction with the Department of Justice and others made was that we ought to try to time these two discussions, the track on the IBM discussion and the track on the pro rata, together, and go forward. The Agency negotiated on that issue, and the question about whether to accept, well, let me start that over. We got to a point where that became a key issue as to whether or not there would be a settlement with the IBM group. If we had decided not to go with the IBM group, the pro rata settlement would have gone forward and the IBM group could have participated in the pro rata settlement. That is one of the reasons we were trying to keep them linked together, so that they couldn't jump from one to the other and leverage us.

Mr. LEVITAS. Well, before I get off this point, and I am not going to get off of it, I am going to come back to it, there is a letter, June 23, 1982, from former EPA headquarters counsel, Ed Kurent, to Steve Ramsey at the Department of Justice. Without objection, it will be made part of the record.

[The letter referred to follows:]

U.S. ENVIRONMENTAL PROTECTION AGENCY,
Washington, DC.

Re Seymour Recycling Corp., Seymour, Indiana.

STEPHEN D. RAMSEY,
Environmental Enforcement Section,
Department of Justice,
Washington, DC.

DEAR STEVE: I have reviewed the proposals and material received from the generator group on June 9. It appears that a cash-out/total release settlement for large generators is unlikely to occur. This is due in part to our present inability to predict the extent of the contamination problem and our resulting inability to accurately estimate the total clean up cost. As you articulated on June 9 we cannot run the risk of insufficient funding for the total clean up.

In light of the above we should be prepared on June 29 to insist that one or more generators either perform or fully cover the cost of surface clean up. Appropriate limited covenants not to sue would be given in return. Achievement of drum removal will mitigate the most immediate environmental problem while creating the opportunity to properly assess the extent of the remaining problem in soil and groundwater. (After such an assessment our chances in negotiations or litigation would presumably be increased.) If we cannot obtain voluntary drum removal we should be prepared to immediately take action against some or all of the large generators to obtain drum removal.

With regard to the "small" generators I recommend deferring action until we reach a logical breaking point in our dealings with the large generators. This would avoid unnecessary delay which might result in postponement of surface clean up by another season.

Lastly, I would like to suggest that a lead trial attorney immediately be designated for the litigation team. This would facilitate staff-level decision making among the six attorneys currently assigned to this case. The attorney who is to function in this capacity should be able to devote the requisite amount of time to coordinating the various activities in the *Seymour* case.

Sincerely,

Edward A. Kurent,
Acting Associate Enforcement Counsel-Waste.

Mr. **Levitas**. But the portion of significance to me in this regard, and I will quote from it, it is—says: "It appears that a cashout total release settlement for large generators is unlikely to occur. This is due in part to our present inability to predict the extent of contamination problem and our resulting inability to accurately estimate the total cleanup cost. As you articulated on June 9, we cannot run the risk of insufficient funding for total cleanup."

That seems to argue that the realistic total cashout approach never really was seriously anticipated; is that correct?

Mr. **Lucero**. I think you are right. I don't believe we ever thought that we would get very much money from that approach.

Mr. **Levitas**. Have you gotten that figure yet, by the way?

Mr. **Lucero**. No, sir. And the reason it is taking so long is that we are having to ask people in region V to calculate it.

Mr. **Levitas**. Now, which brings me to the next point, which I think is absolutely critical in this matter. Your people, in fact, so far as I can ascertain, every single professional at the Justice Department and the EPA, strongly argued against any settlement that would give a release for ground water cleanup. To document that I will offer without objection for the record, a June 16, 1982, memorandum from John Hammock and others, Department of Justice, to Steve Ramsey, Department of Justice. That was done in preparation for that June 29 meeting with the Bayh Group which you talked about. In there he says, and I am quoting: "No full release will be appropriate without a total cleanup including ground water." He goes on to say that if the Department doesn't cleanup and if the generators can settle with us now we will have to use the total cleanup estimate figure which contains a large enough margin for error to at least provide potential—which is by far the largest potential portion of the cleanup.

Another document, Mr. Lamar Miller, I believe, in June 1982, from Lamar Miller to Ed Kurent, makes the observation that if you split it into two phases, he says split the cleanup into two phases. But at the end he says: "If we cannot get sufficient funds from those parties"—talking about the phase 2 cleanup—"we will go to phase 1 contributing generators."

And that document will, without objection, be made part of the record.

[Document referred to follows:]

MEMORANDUM

Subject: Options for Generator-Financed Cleanup at Seymour Recycling Site.
From: Lamar Miller, Acting Director, Office of Waste Programs Enforcement.
To: Ed Kurant.

At the June 9 meeting at the Department of Justice, the "Bayh Group" of Seymour generators proposed contributing their pro rata share of $4.5 million (that is approximately half of what they feel total site cleanup will cost) in exchange for a full release from the United States and the State of Indiana. At the meeting scheduled for June 29, we will respond to their proposal. I recommend that we present the following counter-proposal to the Bayh Group at that time.

(1) The United States must reject their offer of a pro rata share of $4.5 million since it will amount to less than half of what is necessary for surface removal, and does not account for as yet unknown expenses related to sail and ground water contamination. Also, their proposal requires that the United States seek an equivalent amount of $5 million from the State of Indiana and Seymour Manufacturing. This should not be done at this time.

(2) The United States should present the following options to all generators via the Bayh Group at the June 29 meeting:

(a) Contribute a pro rata share of $30 million for a full release (see attached memo). This offer was developed primarily for small generators but should be offered to all. It is unlikely that large generators will accept this since there are expensive assumptions used to arrive at the $30 million figure.

(b) Split the clean-up into two phases; phase 1 consists of surface clean-up and onsite investigations of soil and ground water, phase two concerns any necessary remedial action for soil and ground water. We will negotiate each phase separately, beginning with phase 1. In order to receive a release from liability for surface cleanup, the Bayh Group must arrange for one of the following:

(i) organize enough generators to manage and finance all of Phase 1 (surface clean-up and investigation);

(ii) organize enough generators to contribute, as a group, $15 million to cover Phase 1. The clean-up will be managed by either the State of Indiana or the United States. Any money remaining will be refunded on pro rata basis.

(iii) have EPA conduct feasibility and design study to arrive at a cost figure for Phase 1 (surface and investigation). When that figure is available, the generators will have (2 weeks—month) to come up with 100% of the cost. If they don't, we will sue. There is no Superfund money available. The State of Indiana is required to contribute 50% and, as of now, has not agreed and is not expected to in the foreseeable future.

For any of the three options above, all money collected from the pro rata $30 million option will go into that fund of money for Phase 1 clean-up.

(c) Money necessary for completion of Phase 2 (subsurface clean-up) will be sought first from defendants in the existing lawsuit and from non-contributing generators. If we cannot get sufficient funds from those parties, we will go to Phase 1 contributing generators (the Bayh group).

At the completion of Phase 2, full release will be given.

It must be made clear to the Bayh group at the June 29 meeting that they will have until July 13 to commit to any of the options stated above. If they do not commit to either paying their pro rata share of $30 million or funding all of Phase 1 by July 13 EPA will obligate funds to immediately begin the feasibility study. In addition, the United States will proceed with the filing of civil action against Seymour generators.

Mr. LEVITAS. My question is, in light of all this advice, can you cite me one recommendation from a professional at EPA or the Department of Justice which advocated a phase 1 settlement with a— with removal of liability for phase 2?

Mr. LUCERO. What I would like to do, I am going to have to put this in perspective. I would like to make a couple of points. First——

Mr. LEVITAS. Let me say this, Mr. Lucero. I am going to give you plenty of opportunity to make any point you want to. I assure you of that. We will be very fair. I am just trying to find out so I can begin to look at it. I haven't been able to find a single document where anybody professionally, any professional person at EPA or the Justice Department ever suggested it would be appropriate to give a full release from liability to the phase 1 or surface cleanup settlement parties. If there is one, please call it to our attention.

Mr. LUCERO. I would like to answer your question, Mr. Chairman, and I still need to put this in perspective. All the documents you cited first of all precede my time in the Office of Waste Enforcement. I didn't move to that job until July 19. I do not have the information. I am going to have to call on other people here to respond to what those documents were directed to, although I can look at them and speculate as to what they meant.

What I can tell you to answer your question, however, is I was, first of all I was not a party to that discussion when it was considered for the Bayh group. But when it did come up for the IBM group, the issue occurred in the early part of September, after Mr. Ramsey and the litigation team had an opportunity to meet several times, and Mr. Ramsey came back to myself and Mr. Brown as the enforcement counsel for the Agency and said this is an issue. I can't right now, and perhaps one of these other witnesses can help me, I can't say that there was a document generated that dealt with that issue. But there were fairly extensive discussions among at least the two gentlemen I have mentioned and myself, as well as with Dr. Biros and from other times, staff people. And the considered judgment at the time was, given the factors that we or I mentioned, we felt that even though it would be potentially controversial, that we could protect and still accept that proposal. And again, if you would like, we went to—we tried to talk them out of it. Mr. Ramsey came back and said this is going to be a major issue. Can we or can't we? Our preference was not to give it. And we have negotiated on the point. And he went, I can't recall exact meetings that he attended, but he bounced up against that wall for sometime.

We finally got to the point where at least at that level, my impression, my understanding was that this was a make-or-break issue. And we made the decision that we could consider—I took the issue to Rita Lavelle and said, this is going to be a difficult issue. What is your interpretation? I don't know what Mr. Brown did, I don't know what Mr. Ramsey did. I suspect, but you should ask them, that they talked with their supervisors about the issue.

Mr. LEVITAS. When did you present that issue to Ms. Lavelle?

Mr. LUCERO. I think when I was first alerted to it in the early part of September or so.

Mr. LEVITAS. August? September?

Mr. LUCERO. September.

Mr. RAMSEY. May I ask a question? There are two issues that sound the same but are different. One is the question of contingent liability that you will hear tossed around in some of these memos. That really goes to the issue of whether or not the group of 24 should remain contingently liable on the consent decree, or should they be released from further liability upon the payment of the $7.7 million cash into a bank and the posting of $15 million completion bond. That is an issue about which we negotiated.

Mr. LEVITAS. Incidentally, let me interrupt you right there.

Mr. RAMSEY. Yes, sir.

Mr. LEVITAS. It is not clear from the documents I have seen who paid for that completion bond.

Mr. RAMSEY. As I understand it, and you will have to ask the generators frankly, the generators did. I believe the group of 24 paid for it.

Mr. LEVITAS. Do you know the answer to that question, Mr. Lucero?

Mr. LUCERO. I have the same understanding, but I think you will have to ask them. It is just my understanding of how it was financed.

Mr. LEVITAS. It is not clear to me whether Chemical Waste paid for it, or whether the cost was shared by the other generators.

Mr. RAMSEY. Let me say this, that my interpretation of the decree as opposed to whatever happened in actual fact was, had the bond not been posted, first of all, several things would have happened. One, there would have been no decree and no release. But say we entered the decree and got subsequent notice that either the bond had been defaulted on or the insurance company hadn't been paid, our rights ran to all the generators. We would have sought to enforce those rights against all 24.

Mr. LEVITAS. OK.

Mr. RAMSEY. So that whether they paid for it or not, they were responsible for the payment of it ultimately, as against the Government, in making sure it was there.

Mr. LEVITAS. The issue that my question is directed toward is the release from ground water, ground and ground water cleanup, or what is described as phase 2.

Mr. RAMSEY. Well, that is what I understood your question to be. I think Gene, frankly, was a little confused. Let me, if I may, avoiding any lawyer's advice about not volunteering, I should probably sit back and hush, but I think candor is important, that we talk about these things.

Lamar Miller, a career-level person who was Gene's predecessor, was the person who was in charge of what Gene does before Gene got to be himself. As former Senator Birch Bayh said at one of the negotiating meetings when introducing himself: "I used to be Birch Bayh," so I suppose to that extent, Gene used to be Lamar Miller.

The point of all that rambling is quite simply this, that whether we reached an impasse in the settlement negotiations in a meeting of late June 26 or 29, at the time of that meeting, John Hammock's memo really goes—and I think it is important to understand that it goes, and Ed Kurent's memo does as well—to the offer that we either anticipated or had received from the then large group of generators.

And it is important to remember what they were offering, because that really does put it in context. They were offering, and their suggestion to the Government was, that the Government give a full release to all of the generator defendants in exchange for the following: We would divide the recovery into three parts.

First, they suggested that we recover from Seymour Manufacturing because they were the people who had operated the facility.

Second, we should recover from the city and board of aviation because they were the owners of the site who had leased to Seymour Manufacturing. That was where two-thirds of the recovery, according to the large groups theory, should come from.

Third, they agreed that they would be responsible for conducting a telethon or canvassing of the group of all generators, the 360 of 400, some enormous number, whatever you see in various writings, we should agree in advance that we would limit their liability to no more than $4.5 million.

They told us up front that they didn't expect to be able to recover more than $2.7 million, and the deal as they articulated it would be, we will canvass our brethren companies, and whatever we can come up with, you will give those people releases; you won't give releases to the folks obviously who don't pay any money. As to the other two-thirds of the cleanup, look to the city and Seymour Manufacturing.

So at the early part of June, prior to the beginning of late June, beginning of July, those memoranda are addressed—while in general thoughts—they are addressed to what we perceived was going to be the offer from that group, the large group of generators.

So that puts it partly in context, and let me build from there, if I may, for just a second.

Mr. LEVITAS. All right. Before you do that though, I need to get an answer from somebody. Does anybody know of, and can identify for us, for the record, any document, memorandum, letter, or other writing from which any professional person at EPA or the Department of Justice recommended a settlement in which, in return for surface cleanup, or the so-called phase 1 cleanup, there would be a release given from such settling party with respect to ground and ground water cleanup, or the so-called phase 2?

Mr. RAMSEY. Yes.

Mr. LEVITAS. If you could, I would appreciate looking at that.

Mr. LUCERO. Can I also——

Mr. LEVITAS. Mr. Ramsey, who said yes?

Mr. RAMSEY. I did.

Mr. LEVITAS. OK, Mr. Ramsey, would you please identify the document for us so we can get our hands on it?

Mr. RAMSEY. There is a document, and I really have to defer to Ms. Walker on that, and I think to the Department. Rather than just lay it in the record, I think we would like to give it to you, or discuss the giving of it to you. This is not my bailiwick, as you may recollect from our discussions——

Mr. LEVITAS. Yes.

Mr. RAMSEY. But there is an internal approval memorandum dated October 25, 1982, which is the normal, customary approval memorandum that accompanies all complaints and consent decrees that are signed by the assistant attorney general, that is signed by me, and I am a professional career-level person.

Mr. LEVITAS. Yes.

Mr. RAMSEY. And signed by Mr. Hammock, who is an attorney from the Environmental Enforcement Section in charge of the case at the time, which recommends approval of the consent decree. It is my understanding, but I don't state it as a fact—and Larry can really address this, or Gene—there may be other writings within the Agency at that time because they have a similar approval method over there. There is an earlier writing, as I recollect, that Larry Kyte, the staff lawyer in region V, did, which discussed the possibility of giving a ground water release for partial—for the surface work. Larry can address that better than I.

Mr. LEVITAS. I will get to Mr. Kyte in just a moment.

Other than that document—and forgive me editorializing at this point and just treat it as no more than that—which was after the surrender was a fact and before the papers were signed on the deck of the U.S.S. *Missouri*—other than that document, you are not aware of any other instrument in which there was such a recommendation? Ms. Walker.

Ms. **Walker**. Mr. Chairman, if I might——

Mr. **Levitas**. Sure.

Ms. **Walker**. It is my understanding—our recollection is, there is no other document, other than the ones Mr. Ramsey has referred to. However, we would like an opportunity after this hearing to review our records for other internal memoranda which may be available.

Mr. **Levitas**. Absolutely.

Ms. **Walker**. If so, we would be happy to discuss with the committee a method by which that information——

Mr. **Levitas**. We will keep the record open for a period of time for such purpose.

We would also like to discuss with you the document, that litigation—

Ms. **Walker**. Approval memorandum. We may have some concerns that some of the documents still may contain enforcement sensitive material——

Mr. **Levitas**. We will handle it in accordance with our agreement.

Ms. **Walker**. Thank you.

Mr. **Levitas**. Ms. Walker, you see, you identified my concern. There may be such pieces of paper floating around. There may be. I don't know; you don't know. What is significant to me is what was in the stated knowledge of the principals who were representing the Government in that matter.

Ms. **Walker**. Yes.

Mr. **Levitas**. My concern is, as I look through this, for example, Mr. Ramsey speaks of the impasse on June 29. But I point out that at that time, the Government was about to make its proposal of a $30 million figure with a pro rata cash out. That hadn't even been made formally as yet at that time.

So my question is, if that was what was being said by the professionals at EPA and Justice, with the Government about to make that $30 million cash out pro rata, I am baffled why the IBM offer would have been seriously considered unless there were other factors which began to intervene. And we are going to get into those other factors.

Mr. **Ramsey**. Let me, if I may, go back to having put what I did in context, about the documents we talked about and about the genesis for the settlement offer with the IBM folks, because I think it is important, having laid that earlier foundation in my answer, to follow it up, if I——

Mr. **Levitas**. Before you do that, let me do this, if I may. I do want that and appreciate your—Mr. Brown, Michael Brown, if you could just sort of pull up a chair to the table there, because I think we are now getting into some areas that you may have had some conversation about, and I don't want you to feel removed from the discussion.

[Witness sworn.]

Mr. **Levitas**. Mr. Kyte, if you would sort of join the party table. If you would identify yourself, name and position.

Mr. Kyte. My name is Lawrence Kyte, assistant regional counsel in region V in Chicago.

Mr. Levitas. It has been suggested, not stated but suggested, that you might have written some memorandum in which you recommended a two-tier or two-phase settlement in which the settling parties, phase 1, would be released from liability with respect to phase 2.

Is there such a memorandum that you authorized, and, if so, would you direct us to it?

Mr. Kyte. I think there might be some confusion on this point. I did write a draft—in June—which considered the question of pro rata settlements. At that time, I believe that I recommended that we go forward as far as small generators for a cash out.

Later on, in August, a final of that was made and submitted to the appropriate officials in which I discussed a complete release to all parties as far as the $30 million total cleanup figure. I believe that is what Mr. Ramsey is referring to.

Mr. Levitas. That would be with respect to the $30 million cash out?

Mr. Kyte. That is correct; that is correct.

Mr. Levitas. Isn't it true that in June, to be precise, June 25, 1982, you did write a memorandum, making recommendations for a position statement regarding Seymour recycling negotiations and that was four days before that June 20 hearing?

Mr. Kyte. Yes.

Mr. Levitas. And this memo will be made part of the record, without objection, in which you specifically advised against a release of phase II responsibility—and I am quoting: "Generators of transporters of waste at the site should be offered a pro rata settlement figure for surface cleanup. And reservation of rights regarding ground water contamination should be made."

Mr. Kyte. That is correct.

Mr. Levitas. That was your position; is that correct?

Mr. Kyte. That was our position at that time.

[Information received from Mr. Kyte follows:]

U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION V

Date: June 25, 1982.
Subject: Recommendations for a position statement regarding Seymour Recycling Corporation Negotiations—Superfund.
From: Pamela Rekar and Lawrence Kyte, Attorneys.
To: Robert B. Schaefer, Regional Counsel.

The attached memorandum is a comprehensive examination of five issues which have arisen in the context of the preparation of the Seymour Recycling Corporation (SRC) Case Plan. A position must be decided on each of these issues in order to facilitate prompt cleanup and settlement of the case. Based on a careful review of each of these issues, we recommend the following:

1. *Surface cleanup at SRC site should be reclassified as planned removal site cleanup pursuant to 42 U.S.C. 9604(c).* The reclassification of the SRC site cleanup from a remedial response to planned removal action will alleviate a primary impediment to the cleanup of the site. For a remedial action, the State of Indiana must assure U.S. EPA that at least 50 percent of the cleanup costs will be provided by the State. To date, the Indiana legislature has been unable to approve such finding. Therefore, no Federal monies are presently available for the cleanup. *See* 42 U.S.C. 9604(c) page 9 of attached memorandum. The primary goal of this action is effective prompt cleanup of a hazardous situation. The reclassification is justifiable and will achieve this goal.

2. *Generators and transporters of waste at the site should be offered a pro rata settlement figure for surface cleanup. A reservation of rights regarding groundwater contamination should be made.* As discussed in the attached memorandum, an early settlement with some of the generators will accomplish two goals: (1) provide monies for surface cleanup; and (2) pare down the number of potential defendants thus increasing the efficiency of government litigation resource use.

A pro-rata settlement with generators and transporters of waste at the SRC site is a viable mechanism to achieve the above stated goals. Although the total cleanup costs are not yet available, the information regarding surface cleanup costs has led the technical staff to conclude that 10 million dollars is a fair estimate for surface cleanup costs. A 50 percent inflation of that amount (15 million dollars) should be used for negotiation purposes. Each generator should be offered a pro rata settlement based on that amount. The proportionate share should be based on the generator's percent of contribution to the total waste at the site.

3. *The less than 0.01% generators and transporters of waste at the SRC site should be offered a pro rata settlement figure for the total cleanup costs.* Although a reliable total cleanup cost figure is not yet available, it is reasonable to anticipate that the total cleanup costs will not exceed 30 million dollars. Based on this guesstimate and consistent with 2 above, smaller generators (<.01%) should be offered an early buyout. The 30 million dollar figure should be used as the total cleanup cost for calculating prorate settlement figures. Settlement amounts should be based on percentage of the total waste sent to the site. No set offs should be permitted.

An early but out plan will further our goal of prompt cleanup by providing the monies for same and making this case less resource intensive.

4. *Negotiations with the State of Indiana to establish a State trust fund should begin by July 6, 1982.* The State of Indiana has statutory authority to establish trust funds for the financing of cleanup at a hazardous waste site. *See* Indiana State Code Article 13-7 *et seq*; page 10 of attached memorandum. Under a scheme described in the attached memorandum, the establishment of trust funds should enable the State of Indiana to accept monies from generators and transporters of waste at the Seymour site. Some of the monies contributed to either of these funds, in turn, could be used to meet the requirement under the draft National Contingency Plan that the State of Indiana fund at least 10 percent of the cleanup costs (or 50% if SRC is classified as a remedial site).

Currently, Indiana has been unable to appropriate the monies necessary to meet the required match of funds. As a legal mechanism is available under State law, U.S. EPA can present the plan to Indiana and hopefully reach an agreement with the State. Such an approach to funding a cleanup will allow the cleanup to move forward more quickly, in a cost efficient manner. This should potentially reduce the risk of being unable to recover all the monies expended on a cleanup.

5. *An authorized facility and remedial study for the SRC site should be initiated as soon as possible.* Although it is possible that a generator or group of generators may propose a viable cleanup plan, a delay in the development of an U.S. EPA Plan is unwarranted. As long as any superfund monies are to be used at this site, an U.S. EPA plan must be completed. The monies for such a plan are now available without the need for a State match. Superfund monies will have to be used in any cleanup unless such parties provide all the money to do a cleanup upfront to the government or do the cleanup themselves. Neither option appears likely. Concurrent examination of any plan proposed by generators is available. If at any time it is decided that a generator plan will be used, the U.S. EPA plan can be stopped. There is little to be gained by postponing the initiation of an authorized plan and much to be lost. An authorized plan provides U.S. EPA with a reference point to evaluate other proposals. To delay initiation of such a plan merely delays the final cleanup of the site.

SEYMOUR RECYCLING CO., SEYMOUR, IN

Issue: What is the status of the Seymour Recycling facility now that CERCLA is a reality?

Background: The Seymour Recycling facility is a 14-acre abandoned waste site about 3 miles southwest of the center of Seymour, Indiana. A drainage ditch runs about 1,200 feet northwest to Heddy Run which drains into the East Fork of the White River, a tributary to the Wabash River. Operations at the facility were started in 1968, and a wide variety of chemical and industrial wastes were disposed of in "an environmentally sound manner, principally by incineration on site. As operations proceeded, large quantities of waste could not be readily disposed of accumulated and were stored in drums on site. By 1978, when U.S. EPA made an SPCC Inspection, the site was a disarray of tanks and drums. The Indiana State Board of Health maintained surveillance of the facility and late in 1979, shut it down because of failure to comply with their regulations. Shortly thereafter, Seymour Recycling went bankrupt.

In March 1980, U.S. EPA undertook an emergency cleanup action utilizing the revolving fund under Section 311(k) of the Clean Water Act. This included staging of drums by category, a preliminary ground water study, crude diking and a basic storm water treatment system. Also, two waste generators removed about 4,400 drums of their material. Work was stopped because of a temporary depletion of the revolving fund, but was resumed in August. A permanent dike was erected, security fencing reinstalled, site drainage was improved and other site preparations were made. In October 1980, the first phase of actual site clean up was initiated with the removal of 525,000 gallons of pumpable liquids from the 98 bulk tanks. This activity was completed in July 1981. Studies of soil and groundwater contamination have recently been completed. Despite these activities a substantial amount of work remains to deal with the 100,000 gallons of sludge remaining in the bulk tanks and approximately 60,000 drums (potentially 1.7 million gallons). The drums pose a significant and imminent threat of on-going groundwater pollution. Recent analysis of the carbon filtration system effluent indicate the system is no longer operating properly. The Region V A and E zone contractor has recently begun a feasibility study to develop clean up plans for the site. The surface clean up plan is being fast-tracked.

Headquarters determined that the State (local) share for the Seymour clean up under CERCLA would be at least 50% since the property was owned by the city at the time of disposal. State officials questioned this determination, and asked that EPA Headquarters reconsider the matter. Recently, the decision was made to uphold the 50% funding determination. It is anticipated State will have trouble raising 50% of costs for clean up which could range from $5–$20 million depending on the outcome of the feasibility study. The State has indicated, their most probable source of funding is a recently established Hazardous Substances Emergency Response Trust Fund which will not be available until April 1983.

Region V attorneys working with the U.S. Attorney in Indianapolis are attempting to obtain a judgment or settlement which will contribute to the eventual clean up at the site. Parties being pursued are previous owners and numerous generators.

Response: EPA will continue to work with the state to accomplish as much clean up at the Seymour site as possible. To the extent possible, we will use available EPA contractors at no cost to the State. However, it is essential to point out that the law requires the State to fund its share of the clean up costs and in the case of the Seymour Recycling Corporation it has been determined that this share is at least 50%. Recently approximately $350,000 of non-Superfund money has been earmarked for engineering studies which will indicate the optimum alternative for the Seymour clean up.

Degree of Significance: This issue of great significance since Seymour Recycling is Indiana's top priority hazardous waste site and is listed as one of the top sites in the country.

Mr. **Levitas**. Now, Mr. Ramsey, I had interrupted you at that point. You were going——

Mr. **Ramsey**. Right. I think, Mr. Kyte and others may want to bear me out or have their own say on this, it is important to recollect—and Larry's answer, I think, in that regard does reflect—that we were talking about the Bayh group.

I hate to do this to these two folks because I am sure they would rather have their names remembered historically for something else, but let's refer to the large group of settlers as the Bayh group and the smaller group as the IBM group, because if we don't, we are going to get them confused hopelessly.

The memoranda, as I recollect that we are talking about, were written at the time that we were preparing for a meeting with the Bayh group.

At that time, to our knowledge, it may have existed but to our knowledge at that time in June, no IBM group existed. We had received no communication, at least I hadn't, from them, so that we were looking for and anticipating the settlement offer that I just discussed, one that was going to be made by the Bayh group, which said, break it into three parts, assess liability of a third to the city of Seymour and associated municipalities, a third to Seymour Manufacturing, and a third, maximum of $4.5 million, to all other generators.

We all agreed, and at the June 29 meeting I told the generator group, that that was an unacceptable offer, that the Government really couldn't give that kind of release. They were talking about a full release, topside and bottom, surface and ground water.

We told them at that time that the Government really couldn't sign on to anything which didn't assure that a total clean up at the site would occur, the reason being that at that time, as testimony was later adduced at the hearing before Judge Steckler, the State of Indiana could not come up with its matching funds under Superfund, and there simply weren't any Federal dollars available to clean up the site.

So the answer was, thanks for coming in and talking to us, but no thank you. And Larry may have some information to offer there, I don't know. But the point is that we were basically discussing the Bayh group, and at the time of this meeting I said, because I spoke for the Government, I said: "Here's what we are going to do. We are going to talk to anybody who will talk to us." And our current estimate, and I said it was an inflated estimate, but our current estimate is that it would cost $30 million to do the site. Whether I said it would be $15 million for the surface and $15 for the ground water, as to our estimate, that is the number that we gave them.

I outlined for them at that time in late June what our strategy would be, that we are going to contact all of the generators ourselves sometime in September, and we are going to offer them a chance to cash out for a covenant not to sue based on their volumetric proportion of the $30 million figure which was our high dollar figure. That is what we were going to pursue. We will talk to anybody else who will come in and talk to us, but then we are going to follow up that offer. We will give everybody 30 days to think about it, and we will follow that offer up with litigation.

And I admonished the crowd there, which had a whole bunch of high-priced smart lawyers, to be creative. I said: "This is a tough spot we are all in. We are 2 years into this litigation, and we are looking at long-term litigation. It is going to be expensive for your clients. We are going to pursue this thing actively in litigation, and somebody should think of a creative way we can come up with to settle this matter."

It was after that meeting adjourned and people milled around that Mr. Topol, representing IBM, suggested the possibility, and we discussed the possibility, of a full release, topside and bottom, for a surface cleanup, so long as the group was limited to represent no more than the volumetric share that we allocated to the surface cleanup. This is the June 29.

I said: "I don't know, but I will talk it over with the folks at EPA." I did. I talked with Lamar Miller by telephone immediately. Lamar said that it sounded pretty good to him, that he would check. I talked with the litigation team, the career staff-level folks, EPA and DOJ folks who were there in Washington for that meeting, and said: "What do you folks think?"

It was the thought of the litigation team at that time that if we could get somebody to clean up the surface of that property, limit the group to 40 to 50 percent of the waste by volume in that group, send out a pro rata offer and pursue our litigation, that that would be terrific because, as you pointed out, quite frankly, we were floundering.

We hoped that we could get some money from a pro rata settlement; simply seed money, I think, is the way it was referred to, to get something going on the site because there was no hope in sight. Long litigation in front of us. And we didn't have any bucks to do anything to clean up those 60,000 drums. I am sorry I have been so rambling but I think that puts it in context.

Mr. Levitas. No, it is helpful. But, you see, even before the Topol proposal or the pro rata cash out, there was discussion amongst all of you about the phase 1-phase 2 approach. That is made clear by Mr. Miller's memorandum to Ed Curran, which is in the record. And it is at this point where he is talking about organizing enough generators to manage and finance all of phase 1, organize enough generators to contribute as a group, 15 million to cover phase 1.

And then then he talks about phase 2, the subsurface cleanup will be sought first from the defendants in the existing light of noncontributing generators; if we cannot get a sufficient fund from those we will go to phase 1 contributing generators.

At the completion of phase 2, full releases will be given. So I am suggesting that whether it was in anticipation of the Bayh group meeting, or the pro rata approach, I can't find anybody who ever proposed giving a release before that October, Mr. Biros.

Mr. Biros. Yes, I would like to make a couple of comments since I was involved in the technical aspects of the negotiations at the time. What Mr. Ramsey stated with respect to the Bayh group offer was correct. One of the additional considerations of the Bayh group at the time was that it did not believe that there was any subsurface contamination problem at the Seymour site.

That is the reason they focused their proposal essentially on a surface cleanup. They made the proposal in the terms Mr. Ramsey indicated. That is the generators, the Bayh group, proposed one-third of the cost of the cleanup, about $4½ million.

There were a couple of estimates that were done by technical contractors for surface cleanup at the time that were available. The general overall cost was considered to be somewhere between $10 and roughly $13 million price range. There was, however, at the time no real good estimate of what the subsurface contamination was, or for that matter, what the cost of cleanup of any subsurface contamination would be.

In fact, that was one of the impediments to a satisfactory resolution of the Seymour site problem in the negotiations that were underway at the time. The technical people met with the attorneys at various points during the summer of 1982 and the issue of the total cost of site cleanup at Seymour was raised at every one of those meetings.

The technical people were asked to pool their collective judgments and intelligences and facts and come up with the best possible estimates of site cleanup at Seymour to include fast removal of waste as well as subsurface investigations necessary to clean up the subsurface contamination, if any existed. That in fact was done. There was a group, under Mr. Miller's direction, and my own, who in fact did this, working with region V technical people as well.

In fact, Mr. Miller's memo that you mentioned lays out what is essentially the outline of the results of that evaluation are. That is where the $30 million figure comes from. In fact, as you can see, it is roughly 50 percent for surface cleanup and roughly 50 percent for subsurface cleanup, for a total of $30 million.

Mr. Miller's memo also says he is willing to give a full release to any generator who contributes a pro rata share of $30 million, that is, based in part on the consideration that the probability of total site cleanup costing more than $30 million is minimal.

We basically agonized over the value of the surface cleanup on the technical end of the shop for some time because obviously there was limited investigative data and information available. So we very carefully put together the cost of subsurface cleanup to cover the worst case situation.

That is essentially where the $15 million for subsurface cleanup came from, and the $30 million value, as well. I think at the time that the position of the office, Mr. Miller's position as Office Director, was that we would in fact give a full release for any generator who contributes a pro rata share of the $30 million.

Mr. KYTE. If I could add just a little historical perspective.

Mr. LEVITAS. Yes, Mr. Kyte.

Mr. KYTE. I think it was probably about February when our ESE reports were coming out on ground water, that we realized we were going to be in a situation, without Superfund money being available to us at the site, of having difficulty in going forward and getting a reliable cost estimate as far as the total surface cleanup. This was because of the drums being on site and without the financial means to get them off in the near future.

So the litigation team about that time began discussing the concept of seed money, if you will. Initially, from my recollection, we were talking about it in terms of small generators only, and during those discussions, as the spring progressed, I believe the $30 million figure may have come up during that time.

At our June meeting, our first June meeting with our supervisors, the $30 million figure was discussed, and the cash-out concept. We were asked to get the technical data which Mr. Miller's shop did get. Then when we came back, before the meeting on the 29th, there was discussion about the $30 million figure and whether it would cover worst case contingencies.

And at that time it was—the decision was made that we would offer the $30 million cash out, making it available to everyone. That was, at least from my memory, about the first time a decision was made that we would give a total cash-out.

We did initially announce and consider giving a partial, a settlement option designed for larger generators, available to all, but desirable to large generators expecting a lot of them would not find the large $30 million cash-out offer to be very attractive, of giving them an alternative low option, if you would, for release for surface liability only at $15 million. That was later dropped as the IBM negotiations progressed.

Mr. **Levitas**. Thank you. Mr. Molinari wanted to follow up on a point.

Mr. **Molinari**. Dr. Biros is it?

Mr. **Biros**. Yes, sir.

Mr. **Molinari**. I would like to clear up one question. You said earlier in your testimony that initially there was an opinion expressed that the cost of subsurface cleanup would be relatively inexpensive, or would not run very high. Would you mind elaborating on that?

Mr. **Biros**. Well, I didn't participate in any Bayh negotiations personally, but my understanding was that the Bayh group of generators, collectively, did not believe that there was a subsurface contamination problem at Seymour. They focused their proposal on that assumption. In part, that is the reason they came in with what amounted to a one-third cost proposal for surface cleanup with the additional conditions Mr. Ramsey mentioned earlier.

Mr. **Molinari**. Was the same opinion ever expressed by the Topol group during their negotiations?

Mr. **Ramsey**. This sounds like Mutt and Jeff, but I didn't participate in technical negotiations. I sat at the table on the consent decree negotiations as to the document; the adequacy of the technical proposal was addressed in separate negotiations.

Whether there was or wasn't ground water contamination I don't recollect being much of a focus of our discussion, because when we sat down at the table with the Topol folks, IBM folks in September, the concept of full release for ground water in exchange for surface cleanup was the basis of the bargain.

Mr. **Molinari**. But in order for you to make a value judgment as to whether you would accept an offer, you wanted to be certain that those who were not released would be protected; that there would be adequate funds to cover the subsurface contamination problem; is that correct?

Mr. **Ramsey**. That is correct.

Mr. **Molinari**. So you weren't about to accept anybody's word as to whether there was a minor problem in subsurface cleanup or a major problem?

Mr. **Ramsey**. I see what you are saying. That, frankly, would not have been the focus and wasn't the focus. The issue as to whether we needed to satisfy ourselves there was no ground water problem at the time before we released the IBM group of 24 was not the issue. It was whether we thought our legal theory based on joint and several liability for damage and negligence done to the site and the water beneath it was a good one, which we do, and we did.

And it was whether or not we believe there were enough solvent responsible parties left that we could prove and make a good case against as to their ability for the remaining cleanup to be done at the time, and there were and there are. I mean, you can see from the list of the folks that we have proceeded against in the litigation that we are talking about some of the very largest companies that existed.

And we frankly covered ourselves another way, which is if folks had cashed out. If the remaining people had cashed out for their pro rata share of the $30 million, with respect at least to the EPA worst case analysis cost estimate at that time, we were covered there as well. So we really felt we could proceed under the theory of joint and several liability as to the rest; or if everybody cashed out, we would have the money in hand to do the ground water cleanup.

Without getting too far into the evidence at the time, the extent of the contamination of the ground water was unclear, particularly since we couldn't get new ground water testing on-site at the time until we got the surface cleaned up.

The issue to the Government was, do we have available the litigation tools to proceed against other folks who can pay for the subsurface cleanup? Our answer was, and our analysis I think at staff level as well as at a professional one and on up the line to the policy folks, that we do. And that is the option we chose to follow.

Mr. **Biros**. If I might add a comment, Congressman. The IBM group was aware of EPA's worst case assumption of Seymour site cleanup costs. The focus of the negotiation between the agencies and the IBM group was for surface cleanup with the conditions that Mr. Lucero stated in his statement. And that is that we would negotiate for surface cleanup with a group representing not significantly more than about 50 percent for the waste contributed to the site. So I would say that the IBM group in my opinion impliedly endorsed or were certainly aware of the potential subsurface contamination problem that the agency was very concerned with.

Mr. **Molinari**. I just want to ask a few more questions. Mr. Goodloe, why did you think that the consent decree smelled? My understanding was that that was an adjective that was used by yourself someplace along the line.

Mr. **Goodloe**. In order to properly answer that, I have to back up just a little bit and give you my historical perspective on the pro rata and settlement. We first began to think about a means of getting rid of some of the smaller companies in the case way back in 1981. What we had decided to do at that time was to just deal with all companies that were contributors of waste to the site in aggregate, those comprising about one-tenth of 1 percent or higher, which is roughly around 100 or so companies.

During the course of discussions with some of these companies in the early stages, that is in the early part of 1981 and most of the summer of 1981, a number of the companies asked us to consider not dropping that bottom 200 or 300 companies and maybe fixing a flat rate fee against them raising an additional million or two, maybe 3 or 4 million.

That was sort of the fostering of the pro rata group for the settlement. Excuse me. After we considered that suggestion by some of the companies, and as I recall, I got that suggestion from DuPont's lawyer, who was Mr. Steven Tanner at that time he is now with Bayh, Taggert & Capehart here in the city, we began to think of ways we could get rid of the smallest number of companies. Pro rata began to sound better and better.

We consequently elected to prepare what we thought was a cost estimate that would eliminate the bottom 200 or 300 companies and make the case less unwieldly and more manageable. We worked on that pro rata concept actually for several months before it ever resulted in a cost estimate. We began discussing it in late 1981. We didn't actually get to a cost estimate until June 1982. We did, however, have other things going on at that time.

In mid to late spring of 1982, we were trying to figure out a means whereby we could work this pro rata for the smaller group of companies. One suggestion was just a flat rate on a tonnage basis. For example, zero to 4 tons would be so much, 4 to 5 tons would be another, and so forth. Those categories were discussed. Another means suggested was perhaps by barrels.

We went through several different phases of discussions about that. Essentially, we came up with what we thought was an acceptable pro rata means of handling that matter. Around June 1982, at what I guess was the last meeting with the group that had approached us about settlement, I think it was made known to the generators at that time, the companies offering to settle, that the pro rata would in fact be going forward.

I don't recall whether we made the offer at that time—I am sorry—whether we made known at that time that the offer would be extended to all companies across the board. But sometime during the summer of 1982 the decision was made to offer the pro rata to all companies, as my recollection goes.

So, having given you that historical perspective, my thought was that it would suggest disparate treatment to try to work out a deal with a part of the entire universe for a complete release. I guess my objection, if you want to use the language that it smelled, would be not so much in the document that came out, the consent decree, but in the approach to the result that we had obtained.

I had gotten a lot of commentary from some of the companies about what has been described as the Bayh group or Topol group. Many companies indicated they didn't want to participate in that because they figured they would be spending their money and these generator committees were costing them money. Some have said they didn't want to argue about the best method of containment. They wanted to just get on with it and settle it with the United States. So those are the reasons why I expressed in some memo that you may have seen that it was going to not be perhaps something that was acceptable.

Mr. MOLINARI. Was it your feeling at the time that no one should be released in the phase one settlement of a buy-out provision but should have contingent liability for phase 2 was that your feeling at the time?

Mr. GOODLOE. I don't know that it ever even got that refined. I think that my thinking was, at that time, that if we were going to go forward with the pro rata, we would go forward with the pro rata for everyone. The group that came in, came in as I recall as Mr. Ramsey has described earlier, at the very end of our June 29 meeting in 1982 here at Justice.

And Mr. Topol asked to Mr. Ramsey that if he could put together a group, would he still listen. Mr. Ramsey's response was, as I recall: "It's a public office. We will certainly hear what you have got to say." That is, as far as I know, the beginnings of Mr. Topol's efforts to bring in a settlement package that resulted with 24 companies.

Mr. MOLINARI. Just one last question.

Mr. LEVITAS. Sure.

Mr. MOLINARI. I don't want to interrupt the chairman's chain of thought.

If all of the companies that were joined in had accepted the pro rata offer, how much money would have been collected?

Mr. GOODLOE. Theoretically, I presume $30 million.

Mr. MOLINARI. Is that the understanding of everybody else on the panel?

Mr. RAMSEY. Yes, sir. And, Mr. Molinari, if I may——

Mr. MOLINARI. Yes.

Mr. RAMSEY. So that we are clear, the pro rata offer of the covenant not to sue contained the same full covenant not to sue extending to ground water that was extended in the consent decree as well, so that those folks that accepted the pro rata offer as well as the group of 24 their liability has been terminated.

Mr. MOLINARI. That was my understanding but I appreciate your making the point clear for us. Thank you.

Mr. LEVITAS. That $30 million in the pro rata was based on 100 percent?

Mr. RAMSEY. Participation?

Mr. LEVITAS. That is correct.

Mr. RAMSEY. Yes, sir.

Mr. LEVITAS. Now let me at this point make part of the record without objection a series of notes of Dr. Frank Biros, which we have in our possession, and I think you are familiar with those handwritten notes, Mr. Biros?

Mr. BIROS. There are some, a large number of notes that the subcommittee——

Mr. LEVITAS. I will be specific then. August 23, 1982, meeting; August 22, 1982, meeting; September 2, 1982, meeting; September 14, 1982, EPA-DOJ meeting; September 16, 1982, meeting with responsible parties; September 17, 1982, meeting; October 1, 1982; October 4, 1982; October 7, 1982; October 12, 1982; and October 19, 1982.

I might add for your identification purposes, Dr. Biros, they come from your spiral notebook.

Mr. BIROS. Yes, sir. Mr. Chairman, I am now aware of what notes they are.

[Information received from Mr. Biros follows:]

Mon. 8-23-82

Seymour hearings –

plan needed – imp to Ross

head off Firman amendment by

being responsive.

Staff MTG — 8-23-84

. Rita in off this wk —

Reserve
- 1-2(3)pm — Staff mtgs Mondays (normally 2 hrs)
- Obligation strategy problems

* Dean Ross or contact for USC, both copies of concurrence from fund to OWPE / OLEC

NOTES MADE FRAN

- I.G. energy meeting at 2 p.m. — need coordinator i.e. Pete — Henderson

→ e.g. sub-contractors who were & responsible parties

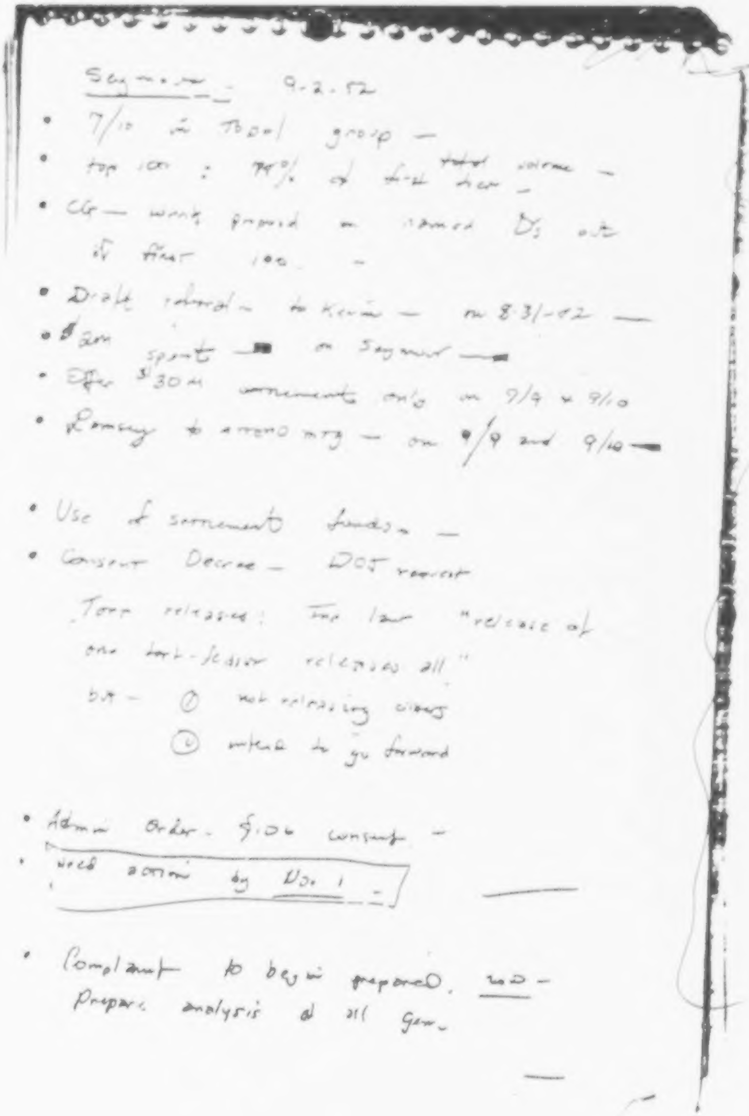
Laridas hearings w/in 30-45 days

→ all cases and what's moved & what's not but ease on what's needed

more commitment to hold actions into confidential done Nov'd.

- Seymour — big case — lit strategy needs to support other strategies including political
- Region by Region review of all cases where, plan, experts — consent decrees — wave — fund cases first then all other cases (strategies)

(cont)



Seymour — 9-2-02

- 7/10 in Tool group —
- top 100 : 98% of first tier total volume —
- CG — wants proceed on named Ds out of first 100 —
- Draft referral — to Kevin — on 8-31-02 —
- $20M spent — on Seymour —
- Offer $30M settlements only on 9/4 & 9/10
- Ramsey to attend mtg — on 9/9 and 9/10 —

- Use of settlement funds —
- Consent Decree — DOJ request

  Tort releases: The law "release of one tort-feasor releases all"

  but — ① not releasing others

  ② intend to go forward

- Admin Order — §1.06 consent —
- Need action by DOJ —

- Complaint to begin prepared. WD — Prepare analysis of all Gen.

Seymour — 9-12-82 DOJ —
Pro Rata Covenant Issues
- No release to CWM for wastes at their facilities where wastes are placed + disposed
  (But Ed — Di told there was continuing liability wherever it went) (No
- Continuing Liability — Came to check on Rata — Probably no
- + We agree not to sue under any c/a in the complaint —
  (resolve agency posing in future)
  its so unlikely they should not be concerned.

2. $\frac{75}{x} \times 30{,}000{,}000 = 28{,}200$

GE — repair Quick Fix System
800-626-2000

$= \frac{28{,}200}{30{,}000{,}000}$

$\frac{75}{x} = \frac{1}{1000}$

$x = 75{,}000$ tons

③ Covenants: go out 9/17
come in 9/25

[illegible]

9-12-82
mtg-cta

Constraint: — Wh't looking for a site for Pres. to visit before Nov election (Oct. 14, 15) (Co. can help to look up Co)
telegram commitment OK. ?
— need to tie up pro rata group with Topol group.—

Issue: should not unhook the ② negotiations
③ and extend both 1 week.

- 2d negotiation : 9/24 Fri. at SPD mtg

④ Yamada — will have verbal statement some. alternatives: Trust Fund or Gr. Registry.

Ramsey: & Secure opinion from Comptroller General
-- payable to agent specified by Govt.

⑤ no fractional settlement — (Cumul. position of settlement)
Chem.-Dyne agreement — 10% share was concluded—

** Get breakout of # 30, M figure.

9-16-82
Mtg

Review: IV -

- No way of final word on this
- might be helpful to understand concerns -
  - Ramsey's issues - Rejoinder. - (Firm's amendments may [illegible])
  - if IV leaves us in same position as if Co. on hook - it's ok.
  - Perf. bond - broadened, expressed - e.g. right of approval
    - CWM liability must be strict liability.
    - insurance must pay in all areas, not only negligence.
    - work performed in compliance w/ fed, state laws/regs. -
      remove "except as provided herein"
    - coverage of insurance - beneficiary (may be trustee - not U.S., not S/P)
    - need to look at bonding Co. liability
  - protection for U.S. - i.e. must be as secure or more Co on hook until work done.

AT - If EPA/CWM working on site and problem occurs who is liable? -

SR - not bound by Bluff Rd - Program evolves.
Fund can't address site
need to be sure site is cleaned up.

- Co. are getting out.
- better deal than pro rata group.

AT all Co. convinced to come in to Total group
- need to get Co. off hook.
  Otherwise will lose some of Total group.

SR - Will meet w EPA and come back
- w/ redraft.
  What if someone doesn't agree?

* - AT: look at trustees and CWM as possible liable parties.
- Coe looking at progress of work and payment of funds by Trustees.

9-16-82 mtg.

Para. X -

SR • Can't take X because its general release.
• suggest - pg. 12 - changes.
• AT - The changes are not Bluff Rd.
- Get the Attorney Gen DOD, Commerce, Agric. Int. to release for NR damage claims
- or DOJ. limit its prosecutorial discretion? No

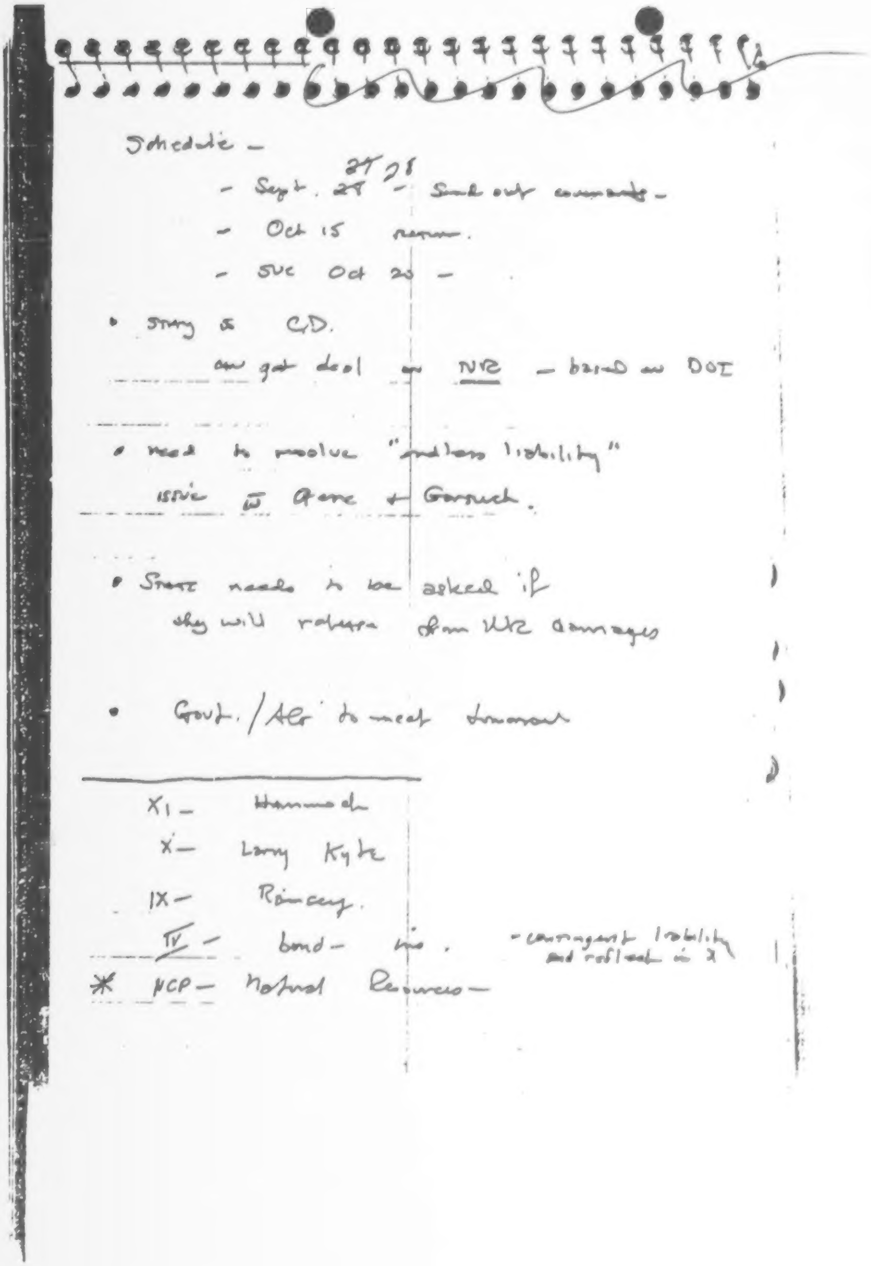
Dupont Will blow the whole thing w/o release from all trustees. IBM agrees.
- NOSE - talk to DOI -

AT

- Format . on preamble — will discuss later.
- handout — pg 2 3
- III - handout
- [illegible], VI, VII - too much VI handed out - too short. / discuss later
- V - revised to be consistent w/ redrafted IV

need to find a way to get force majeure.

- VIII - problem w/ General Motors.
  - alternative: send document request —
  - don't want to continue preservation of records.
  - no deal on VIII - group consensus.
- IX - revised draft.
- XI - feels he obtained more protection under AT's. para V.
- XII - Morrie - will not release the US. only the fund. — will discuss over lunch.
  - 3d party suits - of pro rata group must covenant not to sue this group - then its on with Topol group.
- VIII - don't want "good faith defense" "Subrogate to their rights."



Schedule –

- Sept. 28 27 28 – Send out comments –
- Oct 15 [illegible].
- SVC Oct 20 –

- Stay & C.D.
  can get deal on NR – based on DOI

- need to resolve "endless liability" issue w̄ Grace + Gorsuch.

- State needs to be asked if they will release from NR damages

- Govt./Alc to meet tomorrow

X1 – Hammoch
X – Larry Kyte
IX – Raincey.
IV – bond – [illegible]. – contingent liability and reflect in X
* NCP – Natural Resources –

SR. what modifications would judge make?

MZ. Judge Green – took $5B away from AT&T
in the consent decree.
– = CO. have open agreement –
and publicity for being named as party

JV. greater danger if to EPA if site
isn't cleaned up – man on street
doesn't care about firm

SR. if something goes wrong, public will
care.

MZ. W. Electric looked @ Bluff Rd as basis
for future settlements w/ Govt. knowing
Seymour was down road.

AT. is it worthwhile for EPA to take risk

AR. significance of delay – don't know how
much higher IBM would go

AT. ① Former issue – IGO and agreements would be palatable
JV ② contingent liability – forget it.

AT. look at what SR drafts.

MZ. Will accept contingent liability on contribution,
nothing else. –

AR. Management at IBM says State of Indiana is
not willing to do anything

Biros Notes
9-17-86
mtg.

(Union Carbide)
Bud Smart – Small gen. group unhappy
thinking of writing letters to Admin.
breached fiduciary duty of Topol group.
(they've been lied to)
Topol group getting out for 50¢/$1
(don't like divide and conquer appr)
threatened long term relationship w EPA
10-20 Co. feel same – all concerned

10-1-82

- their interest in settlements increasing

proposal – AO – stip. performance.
– put up sum of $15M (2 PBs not enuf)
– doesn't give them judicial forum
– eliminates 50¢/$1 argument
– & "sweetheart" deal
– don't want or endorse CWA

- Ramsey : control cleanup thru OSC –

→ approve (contractor) + scope of work.
– stip. penalties –
problems w AOs – "anticipated relief"
– § 113 US. Dist Ct – controversies under
CERCLA – Jurisdiction –
would wind up in Ct. ⊂ AO anyway

- Perry – C.D. – bottom line is trustees' liab
Brown – do it in front of judge –
  - STIP. PENALTIES under AO terms.
  - ALJ decisions are CAA – court.
Rita – can meet imminent hazard – to support STIP. PENALTIES
  - doesn't want judicial review. –

- Ramsey – to get back to Topol on Mon
  - shouldn't ask for $15M
- Gene – Go thru w C.D.
  back off is AO to $15M + perf. bond –
  * → and contingent liability)
  - also concerned for approval of (OMB)

10-4-82 ____ Seymour

Consider —

- Consent A.O — (not enforceable immediately) in Court
- AO Acceptable to EPA — conditions (Perry, Lavelle)
  - $15M cash to escrow (including County work)
  - Co. now contingently liable til work done
  - AO to all 25 Cos.
  - CWM not named as contractor but all Co. liable for work
  - insurance — public liab & env. impairment

- pressure building — but

AT
- Deal ridiculous —
- Perry-Lavelle
- risk c C.O. of hold up in Ct.
-

SR
- 2 bottom lines communicated —
- acceptable parameters of EPA —
- Preference for CD
  access to Court

public policy prefers CD. (Ct. sanction)

Ramsey thinks AO would be held up in Dist. Ct. § 113

* Appropriate extent of remedy

10-7-82
Ramsey

- finesse in Sovereign case
- need to discuss EPA/Ramsey

affects cases –

Seymour – 10-7-82

- Topol conv. c̄ Ramsey –
- will recommend & advocate vigorously
- if Dupont & WE walk, Monsanto will come in
- – Para – to define CWM responsibilities
  - to define Co. responsibilities
- – Co wanted separate C.O. because Perry spooked them about keeping them on hook for liability

- AT – Go back to Bluff Rd release? | Issue
  - Complete release is big that everyone working for –
  - Could be sticking point

* • MOU between CG – EPA – 1981 – responsibility for inland waterway response work.

Issue
- "assert defenses"
- Perry statement – "We want to keep a hook in you" – statement made everybody uneasy – Para XIII & XVI is reaction to this.
- * 28 CFR 50.7
- * Morris – Don't trust Perry & Lowell
  want – XI DECREE A in –

Issue
- Voluntary submission to jurisdiction of Ct – why submit when can opt out for pro-rata share & covenant?
-

10/

Seymour 10-12-82

- pro tanto - contribution law in Indiana
  - head count or approval
  - guaranty basis -

[redacted]

- Risks - Legal
  - settled 50% of C/A (State Law) - 1/2 $22.5M or $11.25
  - Legal (seemed more than we wanted to + US left is holding the bag)
  -
- Risks - Political
  - Jim Sanderson
  - CWM-favored treatment (Jack Anderson column)
  - *small gen's aff. / misled by larger members + excluded from group.
  - sweetheart deal - 50¢ on $1.
  -

10-12-82

[redacted]

- 'save up contingent
  liability -

- How to respond
- How to improve document
  - i.e. - defend. -
  - no CWM - US will not seek to modify or open.

- Dictate/write down responses to —
  issues
- Need good press. - announcement —
  pre-, post —

- protect public health
- Bind firms/Perry together.

- Oct 19 - pre-vote letters go out
- deal stands as of now
- agree to defend
  drop XVIII - in case of fraud,
  can get U.S. out (misconduct, misleading)
  modify contribution clause -

Mr. GOODLOE. Mr. Chairman, may I be excused just for a minute?

Mr. LEVITAS. Oh, yes, surely. We are going to, for all of our benefit, break in just a few minutes, but you certainly may, Mr. Goodloe.

Since Mr. Goodloe has just testified as to his concerns about this particular settlement, in which Mr. Molinari asked him why he thought it smelled, there was a note in your October 19, 1982, memorandum. This is shortly before the matter was actually presented to the court. And the notation that I find there is, and I am quoting: "Deal smells as of now."

Were you quoting someone? Was that your own opinion? What did it relate to?

Mr. BIROS. Mr. Chairman, I would like to see that note. I am not sure that I can recall precisely what the purpose or reason for that comment was.

Mr. LEVITAS. October 19.

Mr. BIROS. Mr. Chairman, I do not have those notes with me.

Mr. LEVITAS. Staff is handing you a copy of that note at this point.

[Pause.]

Mr. BIROS. The best I can do at this point without looking at previous and subsequent pages which would put this page in context, I am not precisely sure that these are notes of an October 19 meeting. There is an October 19 date that is stated in the previous line. But I think that refers to the, at that time, scheduled date for issuing the pro rata letters. So that particular comment that you mentioned may have been made, or at least the notes may have been taken at some other meeting or some other date.

Mr. LEVITAS. We will bring up all of the notes that pertain to you after—so you will have them after the recess, but do you know what you were talking about? What deal, and why did it smell?

Mr. BIROS. Well, I can put it perhaps in a general context. During the course of September——

Mr. LEVITAS. Let me make it easier for both of us. Were you talking about the IBM deal?

Mr. BIROS. Well, my opinion would be that the comment referred to the IBM settlement negotiations that were under way at the time, assuming that the notes were taken during that time period. I would need to look at the previous and subsequent pages to verify that. But as a general comment I might make now in my opinion it might have been a statement made during the course of those negotiations that was reflected as much by the IBM group negotiating group itself, as well as anyone else, with respect to our ability to reach an agreement. There was quite a heated exchange during many of those negotiations that occurred in September or October, as Mr. Ramsey will, I am sure, attest to, if he chooses. And such a comment may have been made by one of the participants from the IBM group.

Mr. LEVITAS. Did that, or do you recall whether that reflected your assessment of the IBM proposal?

Mr. BIROS. I do not recall that it does, and I kind of doubt that it does. I at the time along with everyone else participating in the negotiations was hopeful of a settlement satisfactory to the Government and protective of health and the environment. So we were basically striving to reach such a settlement with the IBM group.

Mr. LEVITAS. Mr. Brown, I remember some earlier testimony that there was a meeting at which Mr. Perry, with whom you worked, and Ms. Lavelle were participants, with the IBM group. Do you recall the date of that meeting?

Mr. BROWN. No, I don't, Mr. Chairman. I was out of town at that date, so I don't know what the date was. I would imagine it was some time in October. Perhaps someone else here who attended the meeting could give you a date.

Mr. LEVITAS. Is there anyone here at the table or elsewhere who can recall the date? My recollection is that it is September 29.

Mr. LUCERO. It was September 29, I believe.

Mr. LEVITAS. All right, September 29. And that being the case, that being the case, following that meeting the deal in effect was cut.

I would ask again, Mr. Biros, did you think the deal smells as of now referring to the IBM deal on October 19, 1982?

Mr. BIROS. Mr. Chairman, I was not present at the September 29 meeting.

Mr. LEVITAS. No. But you were making a comment about the IBM deal on October 19.

Mr. BIROS. Well, again, I don't—I haven't recalled anything that would change what I had stated just a couple minutes ago.

Mr. LEVITAS. OK. Well, let's go back to October 12. Again, referring to the IBM deal, and I am not going to cover everything in your notes, but you are certainly welcome to look at them, but I see the term, and I am quoting again: "sweetheart deal, 50 cents on the dollar," "gave up contingent liability."

And that is under some heading entitled "Risks—Political."

Was the use of the term "sweetheart deal" your characterization, or had you heard it from someone else?

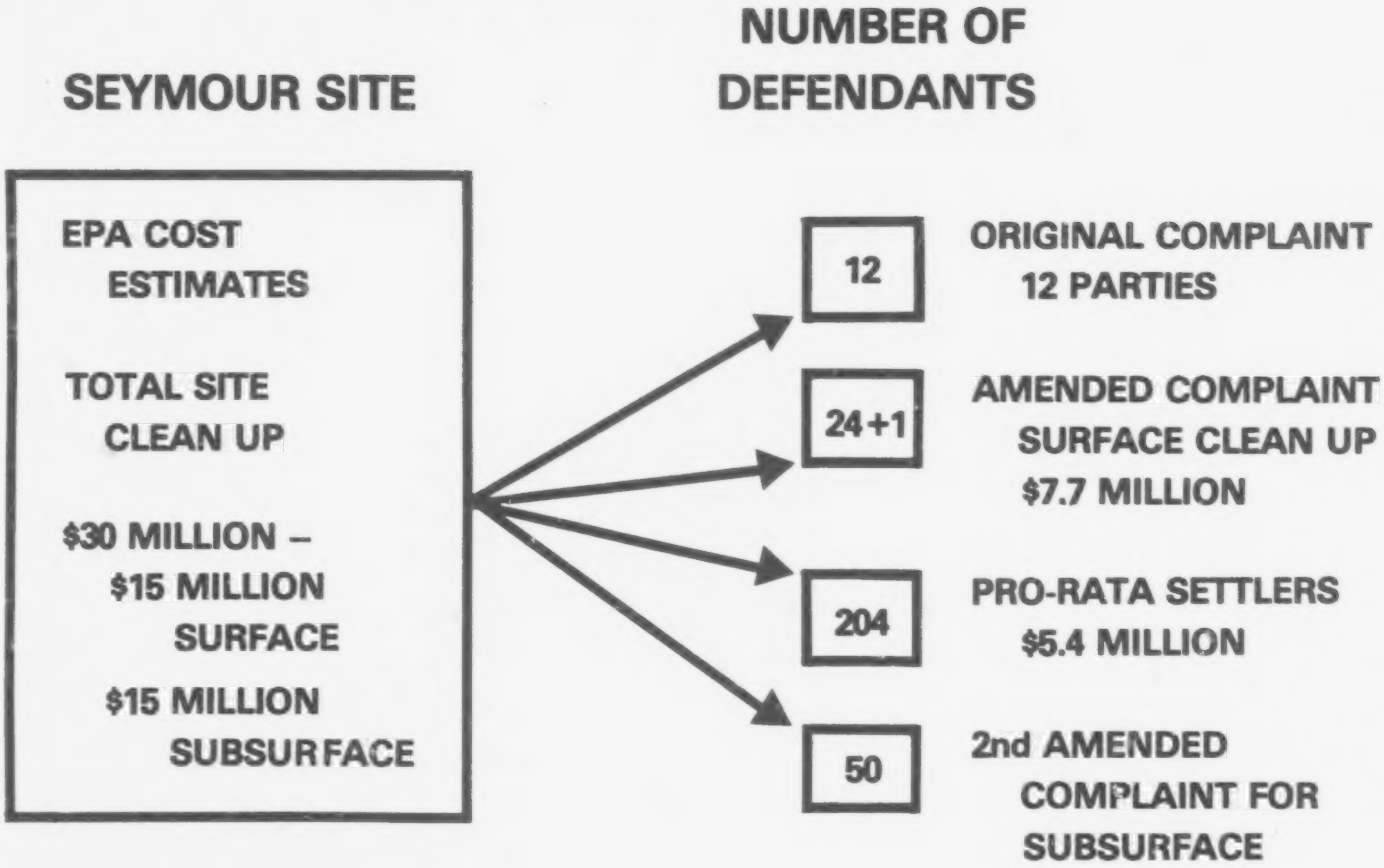
Mr. BIROS. It was not my characterization. I believe I heard such a term elsewhere.

Mr. LEVITAS. From whom?

Mr. BIROS. I don't precisely recall. I might add one other clarifying comment, if I may, Mr. Chairman. During the course of the negotiations, as I am sure you are aware, we discussed the various terms and provisions of the consent decree that was ultimately lodged on October 26. And Mr. Ramsey alluded to earlier, provisions which covered a variety of areas. Releases, contingent liability, stipulated penalties, et cetera. During the course of negotiations we discussed with the potential settlers various aspects of the terms which ultimately resulted in the consent decree. During the course of strategy sessions concerning negotiations, we discussed the pros and cons of the position that were discussed with the potential settlers.

Mr. LEVITAS. Now, let me get back to you, Mr. Lucero. I think this will conclude my questions at this point, although I will say I would like to have the chart that you have described, Seymour site, be made part of the record without objection. I think it would be helpful for us to refer to.

[Information received from Mr. Lucero follows:]



SEYMOUR SITE

EPA COST
ESTIMATES

TOTAL SITE
CLEAN UP

$30 MILLION –
$15 MILLION
SURFACE
$15 MILLION
SUBSURFACE

NUMBER OF DEFENDANTS

12 — ORIGINAL COMPLAINT
12 PARTIES

24+1 — AMENDED COMPLAINT
SURFACE CLEAN UP
$7.7 MILLION

204 — PRO-RATA SETTLERS
$5.4 MILLION

50 — 2nd AMENDED
COMPLAINT FOR
SUBSURFACE

Mr. LEVITAS. I think all of these questions got started when I asked you, based on hindsight and in light of the new EPA policy, would you make the Seymour-IBM settlement today?

Mr. LUCERO. Is that a question?

Mr. LEVITAS. Yes, sir.

Mr. LUCERO. Oh. It seems to me, given the factors that we looked at, if we had had our policy in place at the time, and I mean we would have to look at the 10 criteria that are there. There would be a written statement and a review of those. I am hesitant to say, because I am not exactly sure how we would assess it. My sense is——

Mr. LEVITAS. I am asking how you would. You know we are talking about something that I am somewhat familiar with, you and Mr. Ramsey, probably more than any other two people in the world, are intimately familiar with. You are familiar with everything that happened in the middle of July, on. You looked at this with a microscope. You were playing a major role in formulating the new EPA policy which you testified about previously before the subcommittee. And I suggest that you do have an opinion on that subject. I would just like to know what the opinion is, based on what you know today and in light of the new EPA policy, would you today make the Seymour settlement?

Mr. LUCERO. You will have to give me a minute.

Mr. LEVITAS. Surely.

[Pause.]

Mr. LUCERO. I would generally say that, considering the facts as I understood them at the time and as I understand them now, that I would still make the same decision and recommend it to the final decisionmakers.

Mr. LEVITAS. In light of the new EPA policy, we could have another Seymour settlement is what you are saying?

Mr. LUCERO. My sense is, and I was trying to run through the criteria that I can best remember, is that this one may fit that criteria; yes.

Mr. LEVITAS. Well, before I recognize Mr. Molinari, let me say simply this. That is your judgment and your opinion. You are a responsible official at EPA. And if it is your opinion that we could see another Seymour settlement, even in light of the new EPA policy, then I suggest, and again this is my opinion, that Mr. Ruckelshaus has not brought the Agency far enough along since he's come into that position, for reasons which have already come out, and those will come out during the remainder of the day.

Mr. Molinari.

Mr. MOLINARI. Well, now, I am a little confused, Mr. Chairman. Mr. Lucero, your testimony seems to indicate that this was not only a fair deal, but it was a good deal, the best deal that could have been accomplished under the circumstances. But why, then, were you so hesitant in answering the question that was put to you by the chairman?

Mr. LUCERO. I don't have any particular reason, Mr. Molinari.

Mr. MOLINARI. Well, look at the statement. I have read it a couple of times before today and it seems logical, seems to make some sense. Essentially what you were saying was that it was the best deal we could have made. We have heard testimony from yourself and others that even lacking contribution by the State of Indiana and the CRCL—it was a good deal. Why do you now hesitate to say so? Your testimony says that it was the best deal under the circumstances. I am confused. What is there that I don't know that creates that cloud of doubt in your mind?

Mr. LUCERO. I don't know that there is a cloud of doubt. I am just considering my answers. And unfortunately, I was thinking about, you know, how to answer the question.

Mr. MOLINARI. Let me ask you this. Is it your opinion that when the total cleanup is finished, including phase 2, that all the expenses incurred except for administrative expenses within the Agency and Department of Justice will have been paid back by the responsible parties?

Mr. LUCERO. That is my belief; yes.

Mr. RAMSEY. Could I interject one thing? It is a technical legal thing.

Mr. MOLINARI. Sure.

Mr. RAMSEY. So you will know, we think we can recover the administrative costs, too. We have sued for those as well. One of the views of the Government under Superfund is that we can recover enforcement costs. In fact, in a settlement announced last week we recovered $600,000 of them. I didn't want to leave the impression on the record that we were going to leave those costs lying out there someplace. We will seek recovery.

Mr. LEVITAS. Let me address that, Mr. Ramsey. You played a key role in this. Would you look back now and say we made a good deal, we didn't even have to look to the State of Indiana for any money and we are coming out whole on this, including administrative expenses?

Mr. RAMSEY. Do I think this is a good deal? I think it is a very good deal.

Mr. MOLINARI. Faced with the same prospects again in a future, similar transaction, would you handle it any differently?

Mr. RAMSEY. No. My view of this is, I think, stated by the Department's position in its testimony—that in the circumstances that existed at the time, without running through them again, that this agreement is an excellent deal for the Government and for the public in terms of what it got and what it retained in terms of our ability to pursue other responsible parties. Yes, sir.

Mr. MOLINARI. Let me ask you this, Mr. Ramsey. Isn't your answer predicated upon the estimates of phase 2 cleanup as provided to you because you are a lawyer, you are not an expert in making that determination, it is predicated upon the estimates of the phase 2 cleanup that were furnished to you?

Mr. RAMSEY. Not really, and this was the point I was trying to make earlier. It is based less on either the cost of the additional cleanup or whether there was or wasn't any subsurface contamination. As you say, I am a lawyer. And I think lawyerly thoughts I guess and hopefully do lawyerly deeds. When we went to EPA and said, give us a number you are comfortable with for the pro rata cashout and make sure that it is enough to cover any oversight or increase in costs, quite rightly we relied on those folks for that and they gave it to us. My analysis was based less on the costs of the future than our legal theory that under joint and several liability and under the law that exists that we think prevails under Superfund, under which certainly Congressman Florio has told us several times we have joint and several liability, that we have the ability to make the Government whole, to make the public whole, if you will, for whatever problems existed at the site, having gotten the surface clean, and everybody including the judge found that that was the initial first step. So I was less concerned about costs than making sure that our legal theory and remaining defendants were going to be adequate to get the job done.

Mr. MOLINARI. I can appreciate that. As a lawyer I think that would be a key consideration. But it would seem to me there would have to be an additional consideration, that being the doctrine of equity. Those that were settling with the original 24 obviously, there had to be some kind of consideration given to their exposure, and how much they were going to buy out for as opposed to the remaining liability. So to that extent, it seemed to me you had to rely upon the figure furnished by EPA.

Mr. RAMSEY. Sure, there is no doubt about that. We were concerned. I suppose it was anticipated a bit down the road, having been through 2 or 3 or 4 days of hearings on this in front of Judge Steckler. We were concerned at the apparent inequity between the amount of money being paid by one group and amount of money being paid by the other group. I think had we received a cost estimate that said the surface can be done for x, but the subsurface will be 100*x*, we would all have sat down in the middle of the road and said wait a minute, what are we thinking about and evaluated that. In other words, if we were talking about a factor of 10 or 100 more expensive for the subsurface, based on the cost estimate, we might have had some considerations as to just how equitable this would look on down the road considering volumes. But ultimately the Government is going to be put, in some of these cases, in exactly that tough spot.

Let me give you an example where that may happen to us. We may find ourselves in a spot where we have got generators here responsible for 10, or 15, or 20 percent of the waste by volume at a site. Everybody else is bankrupt. I think if we then turn away and say we can only be concerned about equity, then I know Congressman Florio and probably others will have us up here saying why haven't you used the tools of joint and several liability that you have available to you. So I guess what I am saying is that ultimately the Government's got to make a cut based on what we have in front of us, what is on our plate at the time. The decision we are making is one that under the circumstance is a reasonable one. And under these circumstances, my professional judgment now is that it was.

Mr. LUCERO. Mr. Molinari.

Mr. MOLINARI. Yes, Mr. Lucero.

Mr. LUCERO. Given the line of questioning you have been going down, there is one thing to follow back on what Mr. Levitas was asking that I would like to add. Your line of questioning has made it clear that there is one thing that would not happen that you seem to be concerned about in a Seymour-like case now. And while he asked the question would we do it again, I hadn't thought of this at the time. The one thing that we wouldn't do that we made the decision to do then, and our policy has changed on this point, is that we basically will not negotiate with parties until such time as we have the remedial investigation and feasibility study completed for both phases. And as a result, we would have expected to have a detailed study available in a Seymour-like case before we made a final decision.

Mr. MOLINARI. We have received all kinds of testimony indicating that it was impossible to make that determination until the phase 1 cleanup was completed. That would interfere with the assessment of the phase 2 costs. Now I am hearing, we are hearing, that you wouldn't have entered into any settlement until you had determined phase 1 and phase 2 costs. I don't see how you can reconcile those statements, or else someone is wrong in the testimony given to this subcommittee.

Mr. LUCERO. No. Maybe I am confused myself, but the way I see it is that in most cases that will come up, that present this discussion, is we would try to get the feasibility study completed.

Now, like I say, there is still a possibility that it could occur, that there would be concern.

Mr. MOLINARI. You were here last week when the officials from Indiana were testifying?

Mr. LUCERO. I only heard a few minutes of it.

Mr. MOLINARI. Were you here when they testified that it was impossible to make a determination as to phase 2 cleanup until January, because that was the time when Chemical Waste was going to complete phase 1 cleanup?

Mr. LUCERO. Yes.

Mr. MOLINARI. Were they wrong?

Mr. LUCERO. No.

Mr. MOLINARI. Where am I confused? It was my impression that you can't conduct the proper tests in order to make a determination of the costs of the subsurface cleanup unless phase 1 cleanup was completed.

Mr. LUCERO. Sir, what I was just having explained to me was, from Mr. Bartelt, was that the RIFS could have been done but it would have been extremely expensive. It would have required moving the drums around, in order to conduct the study. So far as I know, that the agency felt comfortable in its estimates was reflected by Mr. Miller's memo of June at that time. That is the basis upon which we have made the decision. But basically, what I am trying to say is that the things we have learned from Seymour is, first of all, embodied—we felt that we needed a policy on how we would conduct the settlement.

The second thing is that we felt very strongly, not just from the *Seymour* case but others, that we needed to have a very good estimate that could be defended if at all possible. I have to, in all honesty, say that if the facts were as they were back then with no changes in policy, I think we would have done the same thing. If it came forward today, we would have approached the site differently and probably had some different pieces of information and done a different analysis.

It is very hard for me to say we would have proceeded exactly the same as it did back in October and September 1982.

Mr. **Molinari.** What we are advocating today then, as I understand it, is that there be an extremely expensive procedure that would be embarked on first, before making that determination.

Mr. **Lucero.** That is what it would require, or in the alternative, we would say, we are not prepared to consider that situation. We are not prepared to consider a Seymour-type release. I mean, those are equally plausible options. I mean there are several ways we could go. I am hesitant without knowing the facts when they come up to be able to say we would decide it exactly this way, because there are different factors that might be involved.

Mr. **Molinari.** Well, let me ask you this question. In your testimony to that score, you say your remedial investigation feasibility study, for evaluation of remedies for subsurface cleanup, is underway. That is on page 15 if you wish to make reference to it.

Mr. **Lucero.** Yes.

Mr. **Molinari.** What do you mean by that?

Mr. **Lucero.** That is what I mean.

Mr. **Molinari.** That is what you mean?

Mr. **Lucero.** Yes.

Mr. **Molinari.** Did you hear Ms. Walker's testimony?

Mr. **Lucero.** I am sorry. I don't recall what section.

Mr. **Molinari.** Well, let me read to you a portion of her testimony. The second phase of the cleanup program is already underway. Now that the imminent hazards posed by the site have been eliminated with the removal of the source of the contamination, an exhaustive analysis of subsurface contamination is currently conducted at the site. I read this as two different things. From Ms. Walker's testimony, it appears that there is an exhaustive analysis presently being conducted. Where, in your case—correct me if I am wrong—my interpretation is that there is merely a study going on at the present time as to the remedies for determining subsurface cleanup.

Mr. **Lucero.** It is the same thing.

Mr. **Molinari.** It is the same thing?

Mr. **Lucero.** It is meant to be the same thing. I don't think we see them differently. We have maybe captioned them differently.

Mr. **Molinari.** All right. Then it is your testimony that the second phase of the cleanup program is already underway?

Mr. **Lucero.** Not the cleanup, but the study of the assessment——

Mr. **Molinari.** That is what I just read. You are saying it is the same thing. The very first sentence says the second phase of the cleanup program is already underway, period. You are saying it is the same thing.

Mr. **Lucero.** The second phase of the cleanup program would be—the initial step would be a remedial investigation, feasibility study. That is what is being done. To go to the cleanup stage, to go to either the containment or ground water removal, whatever the cost-effective remedy that might be selected is, requires those studies to be completed. So far as I know, there is no—in the literal sense—actual cleanup that is started there.

There are well drillings, sampling being performed, certain studies regarding biota are being conducted. That is my understanding.

I don't see them as an inconsistency, but perhaps we are not being clear.

Mr. **Ramsey**. Maybe I can——

Mr. **Molinari**. Let me ask you one further question. Isn't there cleanup going on pursuant to phase 1? The land farming, isn't it still going on today or has it been eliminated as Ms. Walker's testimony would seem to indicate? I mean, if you are telling me that the testimony is consistent, then somebody is losing me.

Mr. **Lucero**. Mr. Molinari, let me ask one of the region V people who are familiar with the site to describe what is going on.

Mr. **Molinari**. OK.

Mr. **Wise**. Excuse me. If you are not under oath, we do need to swear you in.

[Witness sworn.]

TESTIMONY OF RICHARD E. BARTEL, CHIEF REMEDIAL RESPONSE BRANCH, U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION V

Mr. **Wise**. Please state your name.

Mr. **Bartel**. My name is Richard Bartel, region V Superfund coordinator.

In answer to your question, the current status of the cleanup, if I can give you a rough percentage, would be between 95 and 98 percent. All of the drums have been removed, all of the bulk tanks have been dismantled, all of the buildings have been emptied and broom cleaned. A significant amount of contaminated soil has been removed and the great majority of the requisite cover material has been placed. What remains is to complete the fill over the contaminated soils that have been removed. So in essence, what remains is a little bit of additional fill, and then the final site grading as called for in the decree.

Mr. **Molinari**. OK. So, then, you would agree that Ms. Walker's testimony is accurate with respect to the fact that imminent hazards have been eliminated?

Mr. **Bartel**. Yes.

Mr. **Molinari**. That is what I am trying to determine.

Mr. **Bartel**. Yes.

Mr. **Ramsey**. Again, a lawyer's point. We are alleging that imminent hazards continue to exist with respect to subsurface contamination.

Mr. **Molinari**. I understand.

Mr. **Ramsey**. Without getting into that, I think the point of the testimony——

Mr. **Molinari**. With respect to phase 1, imminent hazards that existed have been removed from the site which is consistent with Ms. Walker's testimony.

Mr. **Bartel**. May I clarify a couple points relative to the studies?

Mr. **Molinari**. I wish you would.

Mr. **Bartel**. I think we are talking about the same study in both pieces of testimony. We do have to do a remedial investigation and feasibility study to determine the most cost-effective method of dealing with the ground water contamination that exists at the site.

The second point that I wanted to address was relative to why we were unable to do a complete RIFS at the Seymour site when the negotiations were winding to a close. I am an engineer and the premise is that you can do just about anything you want if you are given enough money. We could have moved all the drums from one side of the site to the other side and then safely investigated the subsurface there; picked them all up, moved them over to the other side. Picked the drums that were originally on that side up and moved them to the other side, then drilled it, collected all the samples.

Mr. MOLINARI. How much would that cost, as an engineer?

Mr. BARTEL. I have no idea, but it would have been millions of dollars. There is no question in my mind that that would have cost a couple of million just to collect samples.

Mr. MOLINARI. I am talking about moving the barrels so you could run your samples.

Mr. BARTEL. Yes; that would probably cost you a couple million to move them from one side to the other, plus you would still have an additional contractor on there with safety issues to be concerned about doing drilling in that area, et cetera, et cetera. So it would not have been absolutely impossible to do a feasibility study on the site. It would have been economically infeasible. It just doesn't make good engineering sense to attempt to do it. As we face sites now, the point Gene is getting to, given the same situation, our policy is yes, do an RIFS first but if it is cost-prohibitive, on many of these sites you can spend as much money sampling and studying as it costs to clean them up. That is why we have hard judgments and that is why it is not a straightforward answer given our policy——

Mr. MOLINARI. Where is this exhaustive analysis of subsurface contamination taking place and how is it taking place?

Mr. BARTEL. So far, we have been working off the site locating proposed monitoring wells, pulling some samples from the local area as Gene documented.

Mr. LEVITAS. Would the gentleman yield.

Mr. MOLINARI. I would be glad to.

Mr. LEVITAS. Mr. Bartel, the point that you make, that sometimes it is economically infeasible to do an exhaustive analysis of subsurface conditions——

Mr. BARTEL. Upfront; excuse me.

Mr. LEVITAS. Upfront, is obviously true. That is almost—almost speaks for itself. But that statement is totally unrelated, it seems to me, to the policy decisions as where you let somebody off the hook for responsibility for that subsurface condition until you know what it is. Those two statements don't necessarily—those two premises don't necessarily follow, one from the other.

Mr. BARTEL. I think we have some tough judgments to make that relate to the costs as estimated. And in this instance, we had a very good worst case estimate that more or less alleviated the Government from the risks, I think, as everyone has said. We had a tough judgment where we were able to correlate those two issues and make us feel confident in the judgments that we were making.

Mr. LEVITAS. But in the instance where Lamar Miller or Mr. Hammock and other officials of EPA, professionals, who are saying because we don't know what that cost is going to be, even at the time you were prepared to make the $30 million cashout proposal, the position of people such as that was, you don't release for phase 2 simply by letting people pay for phase 1. And I just think, you know, that is not me saying it. That is EPA's officials saying it. We still haven't seen a document until October 25 or thereabouts where anybody else took the contrary position.

Did you? Did you advocate that there be a settlement for phase 1 with a release for phase 2?

Mr. **Bartel**. At that point, we had a conservative estimate, a worst case estimate of $30 million, and a potential to get a surface cleanup whereby someone was willing to pay for complete surface cleanup, a performance standard, do the cleanup which we had evaluated at $15 million. Yes I was very anxious to see that take place.

Mr. **Levitas**. Do you know, recall, whether that $30 million worst case—it was prior to June 29.

Mr. **Bartel**. I remember the process. I couldn't give you specific dates.

Mr. **Levitas**. It was prior to June 29. And it was at that same time that Mr. Miller and Mr. Kyte and Mr. Hammock were saying: "Sure, get some money upfront to do phase 1. But don't give a release for phase 2 liability," and you differed with that position?

Mr. **Bartel**. I wasn't involved in the negotiations at that point. I was involved from the standpoint of giving an opinion; is a $30 million estimate a very safe figure? And if we can get someone to buy off on a surface cleanup, which we are valuing at $15 million, is that technically a good approach? And my response was yes.

Mr. **Levitas**. You were not aware of Mr. Miller's position or Mr. Hammock's or Mr. Kyte's position?

Mr. **Bartelt**. I wouldn't be involved in that option. Mine was just a technical opinion on the costs.

Mr. **Levitas**. Thank you.

Mr. **Molinari**. I would like to ask one last question, Mr. Ramsey, a question that has come across my mind.

Under the doctrine of joint and several liability, assuming there were 24 responsible parties entered into a settlement, covenant not to sue by the Government, and the cost estimates for phase 2 were wrong, let's say they were double or triple of that which they originally were estimated to be under the worst case analysis, would any of the group in the phase 2 grouping be entitled to sue those in phase 1, for contribution under the doctrine of joint and several liability?

I know from the Government's perspective the answer is clear, they are off the hook. Would they be off the hook with respect to the joint tort feasors who are not released?

Mr. **Ramsey**. There are a couple of answers. One is they can sue. The question is would they recover, which I take your question to be.

Mr. **Molinari**. Yes.

Mr. **Ramsey**. My own feeling is that under these circumstances, Judge Steckler having looked at it, I think you are going to have a very difficult time, they would have a very difficult time obtaining contribution from these folks. I think a judge sitting in equity can adjust those equities pretty much however he wants to. And the law with respect to motivations, I hate to go down this arcane road but the law with respect to modification of judgments, *U.S.* v. *Swift & Company,* has to do with the circumstances under which a consent judgment or final judgment can be modified.

One of those is whether it has clearly become, I think the words of the Supreme Court are, "an instrument of wrong." Changing facts, changing laws.

Mr. MOLINARI. Excuse me for interrupting, but the consent decree only established the liability or release of liability. That is between the parties, namely the U.S. Government, its related agencies.

Mr. RAMSEY. That is right.

Mr. MOLINARI. Together with those who were settling.

Mr. RAMSEY. True.

Mr. MOLINARI. The others were not involved in the litigation.

Mr. RAMSEY. We think that we have effectively protected the settling defendants from contribution suits and I don't just mean by the contribution protection language by which the Government agrees to adjust judgments. We think the rule is that the intention of the parties controls and given the intention of the parties and circumstances that existed at the time which the court would have to take into account in figuring out whether to open that consent decree up or not, that the defendants probably are going to be immune from any contribution suits.

That is as easy, and I suppose, as short an answer as I can give. I might say, it is just this point that made the defendants very leery of entering into a consent decree at all. They were afraid. One of the companies was AT&T. They had just been through the AT&T litigation where Judge Green reopened the consent decree and they were nervous about getting themselves into a consent decree where that potential existed.

I think the short answer is we think they are protected from contribution. We can recover from everybody else. We hope that is the rule that will be established because, as you know, the statute itself doesn't talk about that.

We are really left just in sort of vagaries of litigation with respect to what the laws of release would be.

Mr. MOLINARI. My own speculation, frankly, would be that if the offer was made to all responsible parties and 24 had accepted, I think the others might be stopped from bringing action. The recitation of facts, I think, are somewhat different here. This group, the Topol group, came forth voluntarily and represented a group of approximately 50 percent of those responsible for the contamination. I don't think the others were asked, if I am correct.

Mr. RAMSEY. There are shades of gray because in fact some of the people who later complained had an opportunity to be part of the group, Monsanto and Mobil to choose two, and chose not to. Judge Steckler's rule outlines, I think, pretty thoroughly the status of negotiations both as to the larger group and formation of 24, who chose to be in or not to be in.

I am sure there is more to it than that. I simply don't know all the ins and outs of it.

Mr. MOLINARI. Mr. Chairman, I think at this point it would be a good time to break for lunch.

I would ask for your recommendation as to when you want to reconvene the hearing.

Mr. LEVITAS. Without objection, the committee will be in recess for 1 hour.

[Whereupon, at 1:20 p.m., the subcommittee recessed, to reconvene at 2:20 p.m., the same day.]

AFTERNOON SESSION

Mr. LEVITAS. The subcommittee will please come to order.

Mr. Molinari had the floor, I think.

Mr. MOLINARI. Mr. Chairman, at this point I would like to call to the Chair's attention that there is a gentleman from the audience who had indicated that he wanted to answer a question that was posed by you, and I don't think that you observed him raising his pencil or pen there before. I think it was Mr. Burack. I think it would be appropriate if we started off with him.

Mr. LEVITAS. Mr. Burack, please come forward. Have you been sworn yet?

Mr. BURACK. No, I have not.

Mr. LEVITAS. Would you please raise your right hand?

[Witness sworn.]

Mr. LEVITAS. What was your contribution?

Mr. BURACK. There was some question about whether staff people or anyone else at EPA had made recommendations in writing or anywhere else about accepting a partial settlement, and I wanted to say that I expressed the view of management that was an acceptable possibility, that on one occasion they had written something to management suggesting that that was a viable option under the circumstances of the deadlock.

Mr. LEVITAS. Would you be able to identify that, so we can get our hands on it?

Mr. BURACK. It was something which right after Mr. Topol had communicated the possibility of getting another settlement group together after the group settlements had fallen apart that was made known at EPA, and upon hearing that, I wrote some kind of memo explaining that to EPA management and suggesting that that was something that might work or might be acceptable.

Mr. LEVITAS. Do you have a copy of that, Mr. Burack?

Mr. BURACK. I don't have one on me, nor could I identify it by date, but it would be late June, I guess.

Mr. LEVITAS. Mr. Kyte.

Mr. KYTE. Mr. Levitas, I believe I am familiar with the memo that Mitch wrote, and I am just looking for it in my files right now. I believe I could get you a copy of it.

The memo which Mitch is referring to I believe came after Mr. Ramsey stopped in at our post-June 29 meeting with the Bayh group and apprised us of Mr. Topol's conversation with him, and I believe it was pretty much the consensus of the litigation team at that time that that was an option that we should definitely pursue, in light of the fact that it would take the risk of cost overruns—

that were at least part of the surface cleanup problem—out of the picture.

So I think that was pretty much the general response of all the litigation team personnel from my remembrance.

Mr. **Levitas.** If you find that, we would like to have a copy of it for the record.

Mr. Lucero, have we found out how much would be coming in if there were a cash out on a pro rata basis?

Mr. **Lucero.** I am sorry to say, Mr. Chairman, we have the list of the dollar amounts, but they are having to calculate the percentages, which I think you would also like to see. She is on the telephone right now, and as soon as it is available, it will be here.

Mr. **Levitas.** All right.

Mr. Biros, have you had a chance to look at some of those notes of yours?

Mr. **Biros.** Briefly, Mr. Chairman.

Mr. **Levitas.** Let's go back to the one I asked you about, October 19, 1982.

Mr. **Biros.** I will continue to look for it. I have not found that specific page as yet.

Mr. **Levitas.** While you are looking through there, let me ask you a question. Were those notes made contemporaneously with meetings, or were they made sometimes days afterward?

Mr. **Biros.** Contemporaneously with the meeting, sir.

Mr. **Levitas.** Did you ever put them together in any form of memorandum or aide memoire to yourself or to files?

Mr. **Biros.** Not really, Mr. Chairman. I did use them to prepare a chronology which the subcommittee staff has, but they were never put together in a formal memorandum.

Mr. **Levitas.** Could you locate the page that has the meeting of October 4, 1982?

Mr. **Biros.** I found the page that I was shown earlier.

Mr. **Levitas.** Is that for the 19th?

Mr. **Biros.** It appears to be a comment made at a meeting held on October 12, 1982.

Mr. **Levitas.** October 19?

Mr. **Biros.** Well, the October 19 date, Mr. Chairman, refers to the schedule date for the pro rata letters to go out, the schedule at the time.

Mr. **Levitas.** And then immediately following that it says: "Deal smells as of now."

Mr. **Biros.** That is correct. That is what the notes say.

Mr. **Levitas.** Now again, my question is, what does that refer to?

Mr. **Biros.** Mr. Chairman, to the best of my recollection, it may refer to the status of the negotiations at the time of October 12, 1982.

As I indicated earlier in testimony, there was a good deal of give and take at various meetings in October wherein each side to the negotiations stated its positions, and the stage of the negotiations at the time may have been such as not to constitute a good deal for the Government or for the public, and that could be what the note refers to. It does not necessarily indicate that that is what the nature of the final settlement was.

Mr. **Levitas.** Look in front of that, and see if you find October 4.

Mr. **Biros**. October 4?

Mr. **Levitas**. October 4.

Mr. **Biros**. I have the notes dated October 4.

Mr. **Levitas**. One of the things that catches my eye there is, "Risk WDC of hold-up in G." I surmise CD is the consent decree?

Mr. **Biros**. Yes, sir.

Mr. **Levitas**. And what does that refer to?

Mr. **Biros**. The note refers to the possibility that the consent decree would not be entered immediately by the court.

Mr. **Levitas**. I see.

Now, right above that it says: "AT: Deal ridiculous." What does that refer to?

Mr. **Biros**. AT are the initials for Mr. Alan Topol, and that would have been the comment that Mr. Topol made at the time.

Mr. **Levitas**. That his deal was ridiculous?

Mr. **Biros**. That the deal as represented at that stage of the negotiations was ridiculous.

Mr. **Levitas**. Now I asked you earlier today——

Mr. **Biros**. To them, sir.

Mr. **Levitas**. I asked you earlier today about where the term "sweetheart deal" came from. I think I called to your attention your notation about "sweetheart deal" on October 12. I notice that according to my notes on the October 1 that word also appears. Does that give you some recollection of where the term "sweetheart deal" came from? Who ever said it was going to be a sweetheart deal? Where did that originate?

Mr. **Biros**. Mr. Chairman, I can't recall where the term originated. Apparently it originated prior to any executed settlement with the IBM group and may have been a term used to describe any one or more of several proposals that were made.

Mr. **Levitas**. That is not very likely, Mr. Biros. Come on. All during this period you are talking about the IBM deal. Everybody is talking about what is going on in connection with the IBM deal. Now you know perfectly well that is what was being referred to. I am just trying to find out where it comes from.

Let me just say, Mr. Biros, you have a very good reputation, but you are not being credible when you make a statement of that sort. Everything in this whole series of conversations—this thing that was on the table was the IBM deal. I am just trying to find out where the term originated. Some people think we dreamed that term up or the press did. Obviously it was being talked about inside EPA during this entire period, and I am trying to find out where it came from and why people were using that term, and particularly when it says: "diminishes 50 cents on the dollar argument" and "sweetheart deal." For you to suggest that it is not talking about the IBM settlement that was being discussed is utterly absurd.

Mr. **Biros**. If I may correct myself, Mr. Chairman, I agree with you, it does refer to the IBM settlement specifically. However, I still cannot recall who originated the word "sweetheart" and its context, but it obviously does relate to potential agreements with respect to a settlement with the IBM group for surface cleanup which would have in fact cost the IBM group about $7.5 million as opposed to the $15 million Government estimate for surface cleanup.

Mr. LEVITAS. Mr. Lucero, you came on in your position at OSWER I think you said in mid-July 1982?

Mr. LUCERO. That is correct, but I need to clarify your statement. I came into the director's job of the Office of Waste Programs Enforcement, which is in OSWER, on July 19. Prior to that, I worked in another office of OSWER.

Mr. LEVITAS. I see. But it was in that positon that you started on July 19 that you first got directly involved with the Seymour situation?

Mr. LUCERO. Yes, sir.

Mr. LEVITAS. Now, what I would like you to talk about for just a few minutes is when you first found out that there was some political consideration that needed to be given in terms of directing a settlement or some resolution of this case and from whom did you get that information.

Mr. LUCERO. Well, in the hopes of being fully candid as you have asked, and as Mr. Molinari has asked, I have thought about that term "political consideration" a number of times. In fact, the first time I really thought about it hard was at our March 3 hearing where we talked about different kinds of political considerations, and without meaning to be avoiding your question, I need to ask you to clarify it, because I can come up with at least three kinds of political considerations.

One is where the community itself is concerned about what is going on, and they are expressing interest. From time to time, as reflected in thoughts that we reviewed back then and that I have reviewed since then, some people called that political considerations.

There are from time to time also discussions that relate to concerns by elected representatives of that community or other communities, and then there are partisan political considerations.

Could I ask, sir, if you could tell me which one you are interested in?

Mr. LEVITAS. Sure. Let me do this, because I am not trying to play a cat and mouse game on this thing. I am trying to get some information. So let me put out a hypothesis, and then I will give you some information relating to that hypothesis, and then you can deal with it any way you want to.

My hypothesis is this, that at some point after July 19, you were told that there was a need to get a resolution of this matter, and you were given on different occasions certain deadlines or target dates, and that you and others referred to them as political deadlines, or there were political reasons, and in the absence of some other explanation given, the deadline dates that I am looking at and will call to your attention, they seem to me at least to relate to the upcoming election. Now what is the significance of that?

I am not getting into political manipulation issues as such. I am getting into the fact that what I think happened is that the reason there was a rush to this type of settlement under the circumstances was because you were given pretty much point-man responsibility by Miss Lavelle; that you, in an effort to do what you thought was expected of you as efficiently and effectively as possible, proceeded to implement that directive and began to push that matter toward the type of resolution that ultimately resulted in the Seymour settlement. There were others who disagreed with that who did not think there should be a pushing or a forcing for political considerations. In the Justice Department, in Mr. Perry's office, Mr. Perry and Miss Lavelle went at it pretty strongly with each other. And that in the context of your being a loyal soldier at the time for Miss Lavelle, you felt it was your responsibility to get the job done.

Now, for example, there is a meeting on notes of meeting on September 2, 1982; EPA, Department of Justice, at the Justice Department. These are notes of EPA headquarters legal enforcement, Mitchell Burack. The quote that I see—and without objection this will be made a part of the record—"Lucero: October 1 deadline, question mark, for everything. Lucero will organize the State and will get us resources. October 8 is our political deadline."

[Information referred to follows:]

Seymour
Mtg at DOJ
Mike Brown
Mary Walker

9-21 2 Mtg Bunch

① Rec'd documents from Reg:
- Revised cons. a 106 order, Topoll props w/ $ nos corresp to ours.
② Rec'd: Agenda from DOJ
③ Rec'd: Proposed sched from Mary Walker.

TOPIC 1: Who will we sue? Charlie knows?
[we don't really have a list]

* Want Referral letter need. (Reg'l referral on the way.

→ We showed back away from pro rata share of $15 mill.

How answer quest of "why can't I get a chance to beat the $15 mill?"
→ too bad - time has run out.

—DISC of funding mechanism

—DISC of Technical
Looks good as of now.....

① What form of AGR

→ Cons. Decree?
~~Is~~ it open. bottom line.
What of delaying release till compl.?
(Wouldn't Consent decree with immed release be more palatable to them).

☆ At least a 10b order

→ We need decide what 10K implications of form of order...

→ Our answer of [illegible] w/ defenses: we'll deal with them in due course of the lawsuit.

Lucero: OCT 1 deadline?. for everything

→ Send out settl pack to Topel 9/8 or ⑨ after State reviews it
Meet w/ Topel 9/13?..
+ 9/17 Mtg #2.
Redraft in between + letter + pro rata.

→ Lucero will organize the State.
^ will get us resource

3/

* HQ comm on magnafax recs Mon
VIZ prorata cov. by Thurs 9/1 for 9/17 finalize
We must do FRI

TIME : PRO RATA COV
-- Comms by 9/9 [what about State,
final for mail by 9/17
[9/28 ~~State~~ is or leave it] .

OCT 8 IS our political deadline

ASSIGNMENT OF TASKS

TOPOL = Larry, Charlie, John, Biros
R.

Pro Rata = Pam, Mitch, Kevin
+ MAC supp services ...

Cover letter for pro rata = Pam .

Mr. **Levitas**. In an undated memorandum, typed notes, entitled "Seymour Recycling Company negotiations concerning settlement options," under No. 4 entitled "Risks," "No immediate agreement will have negative political impact in Indiana, agreement may be possible by October 15."

Another document, September 13, 1982, which will be made part of the record:

> Rita Lavelle memo to Michael Deaver, Deputy Chief of Staff, the White House. We are also proposing that the President may wish to go to Seymour, IN, in October to participate in a private sector cooperation of remedial action at another large hazardous wastesite. Mrs. Gorsuch will be able to rearrange her schedule to come in. The President and two other staff members should accompany her and provide technical backup.

Then in handwriting it says:

> Mike, background is attached. We also can have our speechwriters available to offer words of wisdom. This is very definite environmental success story, one the administration can and should start claiming.

[Document referred to follows:]

Hand carried to White House by Dean Rose - 9/13/8

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

September 13, 1982

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Positive Environmental Action for President

FROM : Rita M. Lavelle Rita M. Lavelle
Assistant Administrator for
Solid Waste and Emergency Response

TO : Michael Deaver
Deputy Chief of Staff
The White House

EPA has Federal monies totaling about $ 5.2 million ready for award for various types of remedial and cleanup work at six hazardous waste sites in New Jersey. This brings to $9 million the EPA awards to New Jersey in the year and a half Superfund has been in existence.

This is an oppurtunity for the President to announce the awards and stress the accomplishments of his Administration under Superfund nationwide.

The sites are Spence Farm, Friedman, Goose Farm, Pijak Farm, LiPari, D'Imperio, Price's Landfill, and Kin-Buc. Two of these lie in the district of Republican Congressman Edwin B. Forsythe, of the Sixth District of New Jersey. Two others lie in the district of Democratic Congressman James J. Florio, of the First District of New Jersey, leading critic of EPA in the House of Representatives.

Many of the sites are in or near the Trenton-Philadelphia area, so that Trenton would be a suitable place for the President to make the announcement, with Governor Kean of New Jersey, Congressman Forsythe, EPA Administrator Anne M. Gorsuch, Senate Republican Candidate Fenwick and others at his side.

Next Friday, September 17, would be an appropriate day. A time in the morning, around 10 a.m., would be best for maximum media coverage.

From this platform the President can summarize the successes of all of EPA as well as support the candidacies of New Jersey candidates, including Millicent Fenwick.

We are also proposing that the President may wish to go to Seymour, Indiana, in October to participate in announcement of private-sector cooperation in remedial action at another large hazardous-waste site.

Mrs. Gorsuch will be able to rearrange her schedule to accompany the President. Two other staff members should accompany her to provide technical backup.

I await your decision.

Mike -

Background is attached. We also can have our speechwriters available to offer words of wisdom. This is a very definite environmental success story — one this administration can and should start claiming.

Again thanks for the opportunity. I know Anne and the Governor would love to share the 'limelight'.

Rita

Mr. **Levitas**. Now, the thing that is interesting to me about that particular one is the date, September 13, because there is also a September 13 letter from Caroline Green, Assistant Chief, Environmental Enforcement Section, of the Department of Justice, to Michael Brown, saying that the first negotiation with IBM will be September 16. That is 3 days after Rita Lavelle's memo to Michael Deaver.

I understand that there was some discussion between you and Miss Walker and you and Michael Brown about the extent to which political considerations were forcing this matter and perhaps interfering with a more orderly approach to settlement. That is what I am talking about.

First of all, Miss Walker, did you and Mr. Lucero have any dispute about the concept of political deadlines and forcing the settlement that might throw it off track?

Ms. **Walker**. Mr. Chairman, I only remember words to that effect ever being brought up once, and that was at the meeting of September 2 at which I believe Mr. Lucero did say something like that as to certain data or political considerations. I do not remember the exact words, as I believe I indicated to Mr. Prolman when he talked to me.

I remember at sometime subsequent to that being advised by Stephen Ramsey when I was with Carol Dinkins—that is, Steve was briefing both Carol and I as to the progress of negotiations. This was sometime considerably later that Gene had mentioned things like that in front of career staff and that he was concerned, and both Carol and I indicated that he should be dissuaded from talking about things like that.

I remember myself telling my own staff that that was not a consideration. It was neither a consideration of mine nor was it to be one of theirs; that we were to be good lawyers and do the very best job we could, and that, of course, the case on the site demanded expeditious treatment, but that political considerations were not to be a part of our procedure.

I may have also indicated that to Mr. Lucero in a telephone conversation subsequent to the September 2 meeting, but I don't have a specific recollection of what I may have said to him, other than that I would have indicated that as well.

Mr. **Levitas**. Mr. Brown, what is your recollection of that? You were at that September 2 meeting, as I recall.

Mr. **Brown**. I was, sir.

Mr. **Levitas**. Tell us what you recall.

Mr. **Brown**. As best I can remember, this is my first involvement specifically with the Seymour site. There were several aspects of the entire discussion, one of which was the form of the agreement because a voluntary agreement was being proposed by the IBM group with the idea being that they could have cleanup at the site more rapidly because you would not have to go through a consent decree approval process. I remember that being a concern of mine.

After some discussion, Mr. Lucero and some others were over on a different side of the conference room and worked back, I understand, from the election day to come up with deadline dates for targets to try and work out an agreement in this area.

I don't remember what the target dates were at that time, other than to say at that meeting that I didn't think we could meet any kind of targets like that.

After the meeting I discussed with Gene Lucero the inappropriateness of talking about political considerations on something like this in front of and around career staff.

Mr. LEVITAS. Where did your conversation with Mr. Lucero take place?

Mr. BROWN. I can't remember. It was back at EPA. I can't remember whether we were face to face or on the phone.

Mr. LEVITAS. Did you ever discuss this matter with Mr. Perry for whom you worked?

Mr. BROWN. Yes, I did, sir.

Mr. LEVITAS. What did you say to him?

Mr. BROWN. It was in the general context of relationships between Mr. Perry and Miss Lavelle and the course of settlement and enforcement strategy. It was just an illustration of some of the concerns I voiced to Mr. Perry about this approach to settlements and this approach to the enforcement of the hazardous waste laws.

Mr. LEVITAS. Now, leaving aside the inappropriateness of discussing matters of political considerations around professional staff, did you have any concern that this would have an effect upon the negotiations themselves?

Mr. BROWN. Sir, being from Texas, there is an expression there, it doesn't matter what color horse you ride as long as you get there. I was pleased to see that there was finally some attention given from what I understand from the region V people to be a virtually 2-year stalemate. If it took this kind of consideration on Miss Lavelle's part to get the pressure created, as far as I was concerned, it was a pressure working both ways.

The group that was negotiating with the Agency was under the same hammer. Fortunately, the election year date in 1982 was also the same date that we were told to start worrying about the ground freezing and the problems that would occur at the site.

So from a pragmatic standpoint, I didn't care so long as we could get an agreement with which we could live. My major concerns, to be honest with you, Mr. Chairman, were the form of the agreement, the involvement of Chemical Waste Management based upon what we were then worried about, and the squishiness of the estimates.

We were being called upon to negotiate on something and, as both you and Mr. Molinari have mentioned your legal backgrounds, it is a little tough, when you are not sure what you client's bottomline is, to come up with a deal which you can say to your client is a good deal.

Those were the major problems when we went into this, and once we got into it, we found there was an intragroup squabble among the Seymour participants from the large group versus the small group, and that caused further problems because we then had troubles in terms of the equities of the situation beyond just the fact that it was a good deal for the Government.

Mr. LEVITAS. Let me pose this to you, because you talk about negotiation technique. If I am negotiating a settlement with you and I know that it is important to you to reach that settlement by a certain period of time, and as far as I am concerned, I would like to have a settlement but time is not so important to me in terms of whether I have it before or after November 2, if I knew that, wouldn't it make it a lot easier for me to insist upon certain terms and conditions that you might have to give me in order to accommodate your deadline?

Mr. BROWN. If that were the scenario. However, it was my belief that the other side was just as nervous that their leverage disappeared after the election. In other words, it was a question of both sides working against the same deadline.

Mr. LEVITAS. Suggesting then that the other side also contemplated that the election date was a factor?

Mr. BROWN. I am just saying——

Mr. LEVITAS. I am asking you what you know.

Mr. BROWN. I don't know. I have no knowledge.

Mr. LEVITAS. Mr. Burack, what do you know about that?

Mr. BURACK. I wasn't involved directly in that part of the negotiations, but from what I heard from talking to people, et cetera, and Mr. Brown thinks pretty much the perception that the pressure was on from both sides and that it wasn't working against us necessarily.

Mr. LEVITAS. But it was understood. I mean let's lay it out on the table. It was understood that both parties, the Government and the settlers, were then looking at a November 2 deadline, which was important to both of them. Is that a fair statement?

Mr. BURACK. I would imagine so, but we had word that that was our deadline, to try to make as best we could.

Mr. RAMSEY. Mr. Chairman, in fairness, Mitch wasn't at the table for the negotiations.

Mr. LEVITAS. I understand that. We are not talking about what was admissible evidence in court. I am trying to find out what was the word around the shop, and I think he has pretty well told us what the word was around the shop.

Mr. RAMSEY. If you are interested, I can also tell you the extent of discussions we had with defendants. I don't know if you wish to get into that. You are going to talk to them at some point, I assume, anyway.

My recollection is—and Frank, Larry, and John are not up here but they can chime in as they please obviously—was that we didn't talk November deadlines or other deadlines with these folks for openers, if for no other reason than the reason you say, why tell the other side what is important to you and what pressure you are or are not under. And so the subject of "we needed this because," or "you needed to hurry up because," or "unless you do this you won't get the agreement"—that was not a subject of our discussions at the bargaining table.

Whatever those notes surmised, they surmised it, I think on their own, from someplace else but not from us at the table.

Mr. LEVITAS. Mr. Kyte.

Mr. KYTE. My perception is that obviously we had a November 2 deadline that was driving us, and I can't believe, I guess, that the other side, being astute lawyers that they were, did not have some perception of it. However, it certainly was never spoken of by us.

I think the date being there, there is another benefit, that at least occurred to me and I think others. That the generators also knew the pressures that we were under. Those factors could also work against them, too in the negotiations. So that was also a certain edge, in the sense of the dynamics and the negotiations.

Mr. LEVITAS. Let me ask you this before I get to Mr. Biros. I just want to complete that thing. You are in region V. This thing had been sitting around for 2 years, and all of a sudden you got moving. Why?

Mr. KYTE. Well, first of all, I wouldn't say it was sitting around, but it certainly was speeded up come August or September 2, and clearly our impression was that the speedup was due to the November elections coming up in general.

Mr. LEVITAS. Mr. Biros, you wanted to make a comment on that?

Mr. BIROS. I just wanted to offer my perception of the negotiation meetings and what was discussed with respect to that November 2 date, and I would agree with Mr. Ramsey and Mr. Kyte that no specific election date deadline was ever discussed at any of the negotiation meetings that I was present at.

I might add a couple of other comments about additional factors which argued for an expeditious settlement. One was the onset of winter which was expected to, in some way, affect the start of the surface cleanup at the Seymour site. The second was that everyone was aware of, in fact the parties mentioned it on that at least one occasion that I can recall, and that is that the Chemical Waste Management contract may escalate because of delays with respect to cost for the surface cleanup.

So those were some additional factors which obviously drove the settlement.

Mr. LEVITAS. Mr. Kyte, you have another comment?

Mr. KYTE. Yes; just to complete my impressions as far as their probably knowing it and it being implicitly understood that November had some significance to the Government. Once the negotiations had reached an agreement in principle, they had to circulate the settlement document for signature, and we gave them a very tight deadline, I believe a week or whatever, to get them back. I think that all went very clearly to give everybody the signal that November was the deadline.

Mr. LEVITAS. Yes, Mr. Biros.

Mr. BIROS. I wanted to add one other point here, if I may, Mr. Chairman. The staff-level discussion with respect to the Seymour negotiations centered around the idea that, as you had indicated several times before and perhaps hasn't really been emphasized enough, and that is that the negotiations had continued on for a great deal of time prior to the summer and fall of 1984.

And frankly, my discussions with other individuals at my level in the Office of Legal and Enforcement Counsel at the time were generally along the following lines. In the interest of accomplishing some surface cleanup work at the site in the interest of basically abating or preventing or mitigating the hazards at the site we needed to get the negotiations on a more expeditious track, otherwise it would appear to us that negotiations may very well continue on for months and months.

There was literally no organized strategy for the Seymour negotiations at roughly the July-August time period of 1982. We were frankly concerned about that.

Mr. **Levitas**. But Mr. Brown and Mr. Perry, you were taking the position that things were dragging on too slowly and you ought to litigate this thing; is that correct?

Mr. **Brown**. No; if I could put everything back in perspective, in July and August 1982 Ms. Lavelle had recently taken part in the Chem Dyne settlement. The next larger issue coming down the pike was the Seymour settlement.

Ms. Lavelle had a very pragmatic concern, and that is the number of sites and amount of money available to the Government were not enough to do the job in Superfund. Her desire was a nonconfrontational negotiation technique with all the potentially responsible parties in an attempt to come up with a format and a way to resolve the sites in a negotiated as well as a litigated manner. I'm not against that.

My problem is that I believe you had to hold stronger on some points than Ms. Lavelle was willing to hold, and you had to litigate a few first to establish your principles. The question that we talk about here in a nice, polite setting having to do with joint and several liability, causation, strict liability, situations such as that are items that are still of hot debate from site to site, and my theory—and Mr. Perry supported me in this—was that we needed to hang tough on some of these items and not give them away because they become a precedent.

A policy comes from each one of these settlements, whether you say you have a policy or not. You begin to string them together in a line and they become your policy. So if you don't sit down and formulate a policy, you look back over your shoulder and you have written one.

Mr. **Levitas**. Yes, Ms. Walker.

Ms. **Walker**. Mr. Chairman, if I might inject a comment that I meant to make earlier—just to clarify for the record, that the word around the shop at the Justice Department was not anything concerning political considerations. I wanted to make that clear, because when I indicated to my staff after the September 2 meeting that that was not a concern of ours, nor were they ever to think that it was, that's where it was left.

It was not raised again and it was not word around our shop. I just want that to be clear, and I think the career staff, if asked, and I note some of them have been, I believe they bear that out.

Mr. **Levitas**. Mr. Goodloe, what is your recollection of this political consideration and the impact it had on the settlement?

Mr. **Goodloe**. For what timeframe, sir?

Mr. **Levitas**. From, say, July 1 through November 2.

Mr. **Goodloe**. 1982?

Mr. **Levitas**. Yes, sir.

Mr. **Goodloe**. I have almost no knowledge on that. I did have some contact earlier on in 1982 with Mr. Klingenstein of Senator Lugar's staff. Most of the time when he called it would be for status reports on Seymour Recycling, also Mr. Lane Ralph, of Senator Lugar's office, again for the same thing. Mr. Klingenstein is here. Mr. Lane Ralph is in the office at Indianapolis, and his office is directly above ours in the Federal building.

Mr. **Levitas**. Were they essentially seeking to get this matter moving along?

Mr. **Goodloe**. I think that's probably a fair statement, yes, sir. We had early contact, at least the earliest that I recall from Mr. Klingenstein in early to mid-December 1981, followed by about 6 weeks our meeting with this group that later became known as the Topol group, and has been variously called the Bayh group. That kind of contact with Mr. Klingenstein went on through at least the spring of 1982.

Mr. **Ramsey**. May I say in that regard—and Charlie can correct me here—Charlie is in the U.S. attorney's office in Indianapolis. The Attorney General's guidelines on contacts with Members of the Congress are that we are permitted to give status reports on cases.

We are not to go to meetings or do anything else except through our Office of Legislative Affairs, and my recollection is that at some point when it got to be sort of more than a status call, if it ever did, certainly we contacted OLA—when Mr. Klingenstein wrote EPA a letter, when Senator Lugar wrote EPA a letter. That's sort of the normal course of business in the Department, to give status reports and really not much more, as I am sure some of your staffers are aware.

Mr. **Levitas**. Yes, Mr. Goodloe.

Mr. **Goodloe**. I was going to say that after the calls came in I did make the requisite checks to make sure that I could provide the information, and that was given.

Mr. **Levitas**. Mr. Garrahan, would you raise your right hand.

[Witness Garrahan sworn.]

Mr. **Levitas**. Were you on the litigation team? What is your recollection?

TESTIMONY OF KEVIN GARRAHAN

Mr. **Garrahan**. I was not present at the meeting where the schedule was set, but I did have a conversation with Mr. Lucero the following day and it was stated that at that meeting it had been decided that it would be a political deadline sometime at the end of October.

Mr. **Levitas**. Thank you.

Now, Mr. Lucero, I think that puts in context what I was asking you about originally. Where did your instructions come from about political deadlines of the sort that you now heard in this conversation, and what did you do in connection with it?

Mr. **Lucero**. Let me start with the first meeting that I recall, and it's important that I have an opportunity to walk through this because I don't think there were direct statements that were made. There were assumptions and understandings that were created and I'd like to have the opportunity to walk through this.

The primary focus of myself when I took over the job on July 19 was initially on the *Chem Dyne* case, which was in settlement discussions, and they were very difficult ones and there were some major policy issues to be decided.

That case took a good part of the end of July and the first part of August. A tentative agreement was reached sometime early in August, and in that case was going through the process of being approved both on the outside with the responsible parties and inside the agency and the Government.

About August 5 or so, there was a meeting held at Rita Lavelle's request to meet with the Department of Justice and the EPA officials, including members in my office and the Office of Legal and Enforcement Counsel to talk about where things were with the Seymour site, and what had happened. There had been some other discussions prior to that, but that is the one I remember most vividly.

As a result of that meeting, a schedule either was proposed at that meeting or was the result of the meeting, and there was a followup meeting to be held, I believe either the 9th or the 12th. I may not be correct, but it was the followup meeting with the same players.

Unfortunately, due to a miscommunication, the Department of Justice didn't show up, but the purpose was to review the schedule and see where things were and whether they could be attained. There was a schedule that had been created, and I don't know whether the committee has a copy of it. I don't personally, but I know that it exists. I have in the past looked at it a couple of times. Sometime toward the end of August——

Mr. LEVITAS. So you remember who formulated that schedule, Mr. Lucero?

Mr. LUCERO. Someone in my office, as far as I know.

Mr. LEVITAS. And at whose directions and according to what criteria? Mr. Biros, if you know, you can just tell us.

Mr. BIROS. There was a schedule that was put together by one of the staff people within the Office in the latter part of August to describe the schedule that the staff felt was realistic for the several tracks that were at the time considered the tracks on which the *Seymour* case would be pursued. That is the surface cleanup, the pro rata covenant, as well as the track involving the conduct of——

Mr. LEVITAS. Did you have anything to do with the preparation?

Mr. BIROS. I was involved with it, yes. One of my staff people, in fact, put it together.

Mr. LEVITAS. Who was the person who put it together?

Mr. BIROS. The person is no longer with EPA. His name is Dennis Devlin.

Mr. LEVITAS. Now, did that schedule take into account the political deadlines that were being talked about?

Mr. BIROS. Not specifically. It indicated a track with dates and milestones for events for the three tracks which culminated in the successful outcome or the conclusion of each of the three tracks sometime in October 1982.

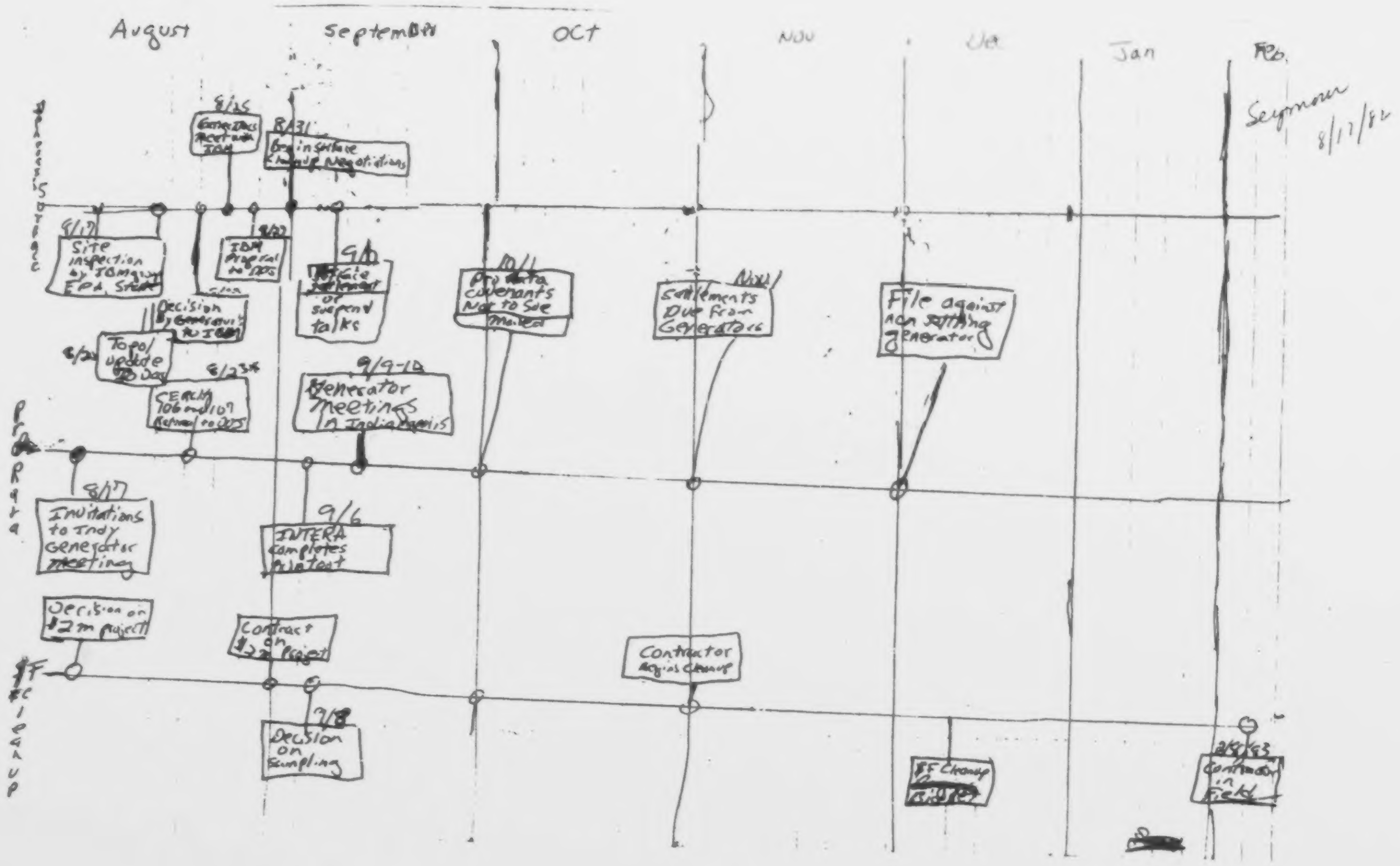
Mr. LEVITAS. Mr. Kyte, you wanted to have something to say before Mr. Lucero completes his comments?

Mr. KYTE. Yes, sir. I believe I assisted Dennis in that. I had flown into Washington for a briefing of Miss Lavelle and I believe that we had a morning meeting and she wanted us to put together something more definite and to come up with a chart. And we had a meeting in the afternooon where we presented a three-track chart. In my notes, I do have a reconstruction of it but I don't have the original of that, which was one of those large tearsheets.

Mr. LEVITAS. We would like to get a copy of what your reconstruction is.

[Information received from Mr. Kyte follows:]

Timeline reconstruction from memory by Larry Kyte. Similiar timeline chart prepared for meeting on August 12, 1982 with Rita Lavelle and staff by Dennis Devlin and Larry Kyte.


August
September
OCT
Nov
Dec
Jan
Feb.
Process Sub Track
Program
$F Cleanup
8/17
Site inspection by IBM, EPA, State
8/25
Generators Meet with IBM
8/31
Begin surface Cleanup Negotiations
8/27
IBM Proposal to DDS
9/10
Decision by Generators to IBM
8/24
Topo/ update 90 Day
8/23
SEARCH 106 and 107 Returned to DDS
9/1
Surface Settlement or suspend talks
9/9-10
Generator Meetings in Indianapolis
10/1
Pro rata covenants Not to Sue Mailed
Nov 1
Settlements Due from Generators
File against non settling generators
8/17
Invitations to Indy Generator meeting
9/6
INTERA completes pilot test
Decision on $2m project
Contract on $2m Project
9/8
Decision on Sampling
Contractor Begins Cleanup
$F Cleanup
2/8/83
Contractor in Field

Seymour
8/17/82

Mr. **Levitas**. Now let me ask you this, Mr. Kyte. When you were sitting in or putting this together, what were the criteria that were before you to guide this schedule?

Mr. **Kyte**. Well, it was really more of a status report on where we had been as we had already committed ourselves to the Topol Group. We were expecting to get a settlement package from them. I can't remember whether we had gotten their technical package at that time, so we had the pro rata and the IBM negotiations already tracked in deadlines which were longer, I believe, than what they ended up with.

There was a $2 million possibility from the State that was being considered at that time.

Mr. **Levitas**. When you say that you were committed to the Topol package or the IBM package, what do you mean by that statement?

Mr. **Kyte**. Well, we expected to get a technical proposal if we already had not at that time, and to get a legal document of some type. We expected negotiations to be going forward sometime down the road, and I'd have to check the schedule but we were expecting to enter into negotiations with them.

Mr. **Levitas**. Well, I guess the last question on that, Mr. Kyte, is: Was there a consensus that that was going to be the basis for negotiations?

Mr. **Kyte**. Looking at my chart, the reconstruction, we expected to have some type of proposal by August 27 according to my reconstruction from them, and then we have on the chart a series of dates for negotiations and cutting it off.

We had originally hoped to have meetings in August with all the generators as far as the pro rata offer physically. We just were not able to accomplish that. So we moved them off by that time I believe to September 9 and 10. We had already scheduled those by the time this meeting with Ms. Lavelle came about.

Mr. **Ramsey**. Mr. Chairman, may I make one observation?

Mr. **Levitas**. Sure.

Mr. **Ramsey**. There is inevitably going to be confusion about schedules, what schedules, and the reasons for various schedules. It appears to me that that confusion existed at least.

In response to your question about the basis of the bargain, when we talked with Mr. Topol on behalf of his group back in the last part of June or the early part of July, I ran it by my counterpart at the Agency, Mr. Miller at the time, and ran by the litigation team, whether this was an acceptable way to approach this entire problem of getting the surface clean.

And, Larry, I think you and Frank can make the comments here. We were operating on two approaches, neither of which at that point, at least so far as I knew, had anything to do with politics. One was we expected a technical package from the Topol crowd for the surface cleanup sometime during the summer to be negotiated into a consent decree or other agreement that would take care of getting the surface cleaned up.

We further, and there was a schedule established at some point during the summer, expected to go forward simultaneously with the pro rata offer. In fact, the Topol group asked us I think at some point not to go forward with that because they were afraid of confusion back and forth and losing some of the members of the group. We said no, we were going to go ahead because that was our schedule. So, at the same time we were, during the course of the summer, always operating from the end of June or the beginning of July on the level of the Topol folks heading for a settlement and hoping for a settlement there.

We were simultaneously working toward the pro rata settlement, and sometime around the first or the middle of August—and I just don't know the dates because I was not responsible on a day-to-day basis for the ongoing workings of this except as a manager—we scheduled mass meetings in Indianapolis to which we invited all the generators to tell them what the pro rata settlement would be all about.

My understanding from talking with Carol Green, who is my assistant chief in charge of region V, was that she later received a telephone call from, I think, Gene or someone on Gene's staff, or from Mike Brown, or someone on his staff, saying that the Agency was not very happy about the level of our preparedness for these meetings in September, and frankly were afraid that we were going to put on a bad face and not be able to make a presentation that would be credible for the Government.

So these things were in the works back in July and August. There is a separate question, I think, that is, with respect to why they got sped up thereafter, whether there was some political consideration in Rita Lavelle's mind or elsewhere about that.

Mr. LEVITAS. That is what I am trying to find out.

Mr. RAMSEY. I want to make sure that that is understood.

Mr. LEVITAS. I understand that. Simply saying that Mr. Lucero obviously, from the question you already obtained, was aware that there were some political considerations related to this, and what I am trying to find out is where that came from and what the nature of those instructions were. What I have already stated, I think, is pretty clear.

Mr. BIROS. Mr. Chairman, if I can add one more recollection here with respect to the charts that were put together for the schedule for action at Seymour. In late summer of 1982, as Mr. Brown has mentioned, the Chem Dyne settlement was more or less resolved, and although the paperwork was in the process of being approved by the various parties the next obvious potential large action by the Agency would be Seymour because of negotiations that have been underway and the promise of the possible proposal on surface cleanup from the IBM group of Chem Waste Management.

At that time, in briefings with Rita Lavelle, Ms. Lavelle became somewhat nervous about what appeared to be, from her perception of staff comments during these meetings, the lack of a management strategy for the Seymour action, so to speak. It was on her direction, through Mr. Lucero, that I talked with Dennis about putting together a three-track schedule that I mentioned earlier which would establish milestones and dates for various events on three tracks.

There are actually several of those charts prepared, and I think each successive one has a more compressed schedule. But the basic thrust or the impetus for the activity by myself and staff was basically to put the entire Seymour action on a coherent, organized schedule of accomplishment, essentially to show that we were setting some goals and that we were in fact attempting to reach some conclusion to the problem.

Mr. Levitas. Mr. Lucero.

Mr. Lucero. At this rate, Mr. Chairman, we are going to be here for a while, but let me pick up after the first two meetings. And as I was explaining, there was a schedule, hopefully a coherent management plan, as to how to manage all the different components of the litigation strategy.

In the latter part of August Ms. Lavelle came to me and indicated—and she did this on more than one occasion, so I'm going to try to reconstruct them as best as possible—she came to me on different occasions in the latter part of August and she said first that Senator Lugar had talked to her and said that something had to happen at that site. And her reaction was one of nervousness, and she wanted to make sure that the things were going as they were expected.

Sometime around the same point, as I recall, she had a discussion with the Governor of the State of Indiana, and he said—and it came up in an unusual way and caused her a lot of concern. She had been addressing, as I recall, the National Association of Governors, the National Governors Association, and Governor Orr had been there and he had done the introduction of Rita Lavelle. And as part of that introduction he had praised her and said what a fine job she was doing, and was very happy about it. And she said one of the reasons he was particularly happy was that she was going to make something happen at Seymour.

She came back from that meeting. As it turned out, I had been picked up somewhere else and we rode back to the Agency together and she said now she was nervous about what was going to happen. Somewhere before the September 2 meeting——

Mr. Levitas. Let me interrupt you there for one thing, again because I don't want to play games on this thing. Did you hear the testimony last week where a former aide to the Governor testified that when the Governor came back to Indiana after a meeting of some Governors association that he said: "I met Rita Lavelle at that meeting and she came up to me after it was over and said that they were going to give Seymour priority consideration."

Mr. Lucero. I did not hear that, sir, no.

Somewhere after the experience with Governor Orr and before the September 2 meeting, she communicated to me once more that she had at least a second conversation, perhaps another one with Senator Lugar or someone on his staff, and they were inquiring as to what was going to happen and when. She was very concerned. The concerns that I therefore was given to take to the September 2 meeting was what was going to happen and what could I report back to her.

The September 2 meeting, as has been partially described by several of the witnesses, covered a lot of different topics and I'm not sure that I remember all of them. But I recall that we were concerned about the state of preparedness for the September 9 and 10 meetings in Indianapolis for the pro rata settlement discussions with all generators were not in the state that we had hoped they would be.

It is clear to me that there was some concern about linking up the two settlement negotiations; that is, the IBM group and the one with pro rata group. We were concerned that in response to the pro rata offer, if one settled first then the company could drop out and break up the IBM negotiations. Since we did not believe that the pro rata settlement would provide sufficient funds to begin a substantial component of work at the site, we wanted to not undermine the IBM negotiations by moving too quickly on the pro rata offer.

We also talked about the form of the agreement and we talked about the schedule. The situation that occurred was that there was a lot of comment to the effect that they really did not believe that the schedule could be sped up at all.

At that point, as I recall, I went as Mr. Brown has already stated, I went off and talked to Larry Kyte and to Pam Rekar, the two regional attorneys, and tried to get some assessment of what, since I wasn't as familiar with the case as some others, what items remained to be done in order to determine where there were things that could be moved up and what could happen.

We played around with it for a few moments and we came up with a schedule. It was substantially tighter than the original one that Mr. Biros has commented on. Indeed, it said initially that on October 1 we were trying to have all of these various discussions concluded and if they weren't successful on the negotiations side then we would try to be prepared to file the case. That was based on my sense of what could be done. And I will come back to that if you desire.

But in presenting that schedule which I did, I basically ran through the various points between the September 2 and September 9 and 10 meeting and later, and I think there may have been one or two others. I thought, based on at least what I then understood, that we can meet this October 2.

There was a great deal of reluctance or criticism at least implicitly expressed and I think at that point—I know I said this but I'm trying to tell you my state of mind at the time based on the pressures that I was feeling—I said: "Well, so far as I know, Lugar wants to make an announcement here, and I think he's going to be putting pressure or something to that effect on us to get something done."

I don't remember my exact words.

However, at the end of that meeting, Mary Walker did call me after the meeting and said that she thought it was inappropriate that I brought that particular last point up. I would note for Mr. Brown's benefit that more than once we have discussed that item. But shortly after that meeting he also pointed out that I probably shouldn't have said those things.

Later on in the month I think Mr. Ramsey and I talked about it, and Mr. Ramsey also chided me for it.

Notwithstanding that, it was my opinion that this was still an appropriate case to push forward because there were a number of considerations which have already been mentioned. First of all, we had this potential for possible settlement. We had a very serious site. We had the risk of winter delaying substantially what could occur.

I was of the opinion that many of the delays were due to not being able to give the proper attention to certain key elements of a critical nature and could see that we could make some adjustments to try to help in that regard, and I really felt that it could be done. And I thought it was an important site to do.

As I've testified elsewhere, there were other calls that were made by Senator Lugar's staff. As I testified in the trial of Rita Lavelle, there was at least one call where his election staff made a call to Rita Lavelle. I have never, myself, talked to either Senator Lugar's staff or Senator Lugar, but it was clear that he was very interested in what was going to occur. The negotiations proceeded on the multiple tracks. I spent most of my time attending to policy problems and management problems.

Mr. LEVITAS. Before you get beyond that, Mr. Lucero, I think it would be helpful to you to put in focus. At that time when you had your discussion with Ms. Lavelle after she had met with Governor Orr, who was it that came up with the idea of the November election date as being the target? Was that yourself? Was that your idea, your date?

Mr. LUCERO. That was essentially my date.

Mr. LEVITAS. Did Ms. Lavelle say that that would be the date you had been looking for, or was it something you came up with?

Mr. LUCERO. Rita Lavelle never told me, as I've testified any number of places. She never told me that there had to be a settlement by the election. She never gave me instructions to find a way to settle this case. What she basically said was if something can be made to happen, that is what I need. And since every time she told me that was after a conversation with one of the two elected officials in the State that were talking to her, I made some assumptions as to what their interest was.

Mr. LEVITAS. And this letter or memorandum she wrote to Mr. Deaver, did you discuss that with her before she wrote it?

Mr. LUCERO. I never discussed that particular note. I discussed that issue. Ms. Lavelle was looking for ways in which to promote the hazardous waste program. As you probably recall, she was taking a fairly good pounding from, among others, well, in fact from a number of Members of Congress about the inability to get things going, and she was looking for ways to promote the program.

And when she saw the revised schedule she concluded that if things worked as they may, then there was some potential for an announcement. And for a while she played around with that idea and tried to bounce it off the White House apparently, as reflected in that particular memo.

I should tell you that down the road in about the middle of September I had to advise her that it was—there were two things I had to advise her, and I'll come back to these later if you desire:

One, that facts that were becoming evident to us were going to make this a very difficult decision at Seymour, and it wasn't necessarily something that she wanted to have someone such as the President announce. And second, and more importantly, there was just no assurance of that point from my perspective that we would meet our deadlines at all. We had set them as goals, but we recognized that there were very difficult negotiations and we weren't at a place of agreement that I really felt comfortable with the date.

The other thing that I'd like to mention to you is that later, toward the end of September, we had gone through a number of issues, and we're going to come back to it, but we had raised a number of problems that we were concerned about.

The document that you refer to as an undated, unsigned memo that talked about—and you picked out just a couple of things. If I'm correct in the document you are referring to, it's about a two- or three-page document that at my request Dr. Biros put together. And I may have expanded on it. The reason was to go forward to Rita Lavelle toward the end of September and say this is where we stand from our perspective, and these are the pros and the cons of this potential settlement.

The points about the sweetheart deal issue and about Sanderson, which I know that Congressman Molinari wants to come back to, are things that we were aware of or that had come to our attention and we thought they made the decision very controversial. The thing that we were constantly wrestling with in the agency was that it seemed to be a good decision, but it was going to be potentially controversial one that we were trying to make, and we really had a lot of aggravation——

Mr. LEVITAS. Mr. Molinari is going to go into the Sanderson and Chemical Waste matter in some detail. But let me tell you what strikes me. The press at this time did not know what the IBM proposal was or what the nature of the conversation was. It was obviously something that had evolved inside EPA or the Department of Justice that viewed this proposed settlement as potentially being considered a sweetheart deal. Mr. Brown.

Mr. BROWN. I'm sorry, sir, despite so many years in the Army, I did just volunteer. I would point out that the generator groups evidently had all the airtightness of a seive because we were receiving complaints about the proposal from people who were not members of the Topol group.

They were showing us letters that had allegedly been written to them by people who steered the original large generator committee, indicating there would be no agreement, or, if there was going to be one, it would be for substantially higher stakes.

They were coming to us and I can recall vividly one meeting with Mr. Ramsey and myself and some representatives of the dissident settlers who were coming in and were using those terms, and this was before the agreement was signed.

So I would not confine the use of that term since I've heard it used by people outside the Justice Department, and EPA too, within EPA, or some relatively vociferous individuals who were on the outs.

Mr. LEVITAS. When you say settling generators, do you mean nonsettling generators?

Mr. BROWN. Dissenting. The people who were generators were not part of this group of 24. I say allegedly because we never had the opportunity to sit with them. They didn't get their chance to get in when they could have, or maybe they weren't asked. And then when they wanted to get in they would have boosted the percentage of waste reached beyond 50 percent, and therefore they couldn't be allowed in.

Mr. LEVITAS. Well, I haven't got to that point yet, but you had structured a system which was inherently discriminatory, it seems to me. If I were a chemical company and wanted to settle and get out for 50 cents on the dollar, there wasn't room for me because I would have pushed it well over the 50 percent.

Mr. BROWN. Let me put my Government hat back on and go back into September and October.

I had a problem that we had been dealing with all the generators in very large meetings for almost 2 years, as everyone has told you. No one seemed to take the Government very seriously. Everyone, I guess, seemed to be worried about the hourly approach as opposed to necessarily a solution. It was only then somebody finally began to take the Government seriously. I don't know whether it was Chem Dyne. I don't know what it was because I was not a party to the population until September.

Finally some people said: Here is a discernable piece of work and we'll go off on our own and agree to do this piece of work if you will give us these breaks.

I'm not necessarily ecstatic about the intragroup problems that occurred, but I think the theory is not a bad one. If you have people in a situation where the Government can't spend money and they are willing to use their time to come up with something to achieve the public good and they want a quid pro quo and the Government has told them what you are going to do is half the site, then if they clean up their half of the waste and the site they should get completely released.

Now, I'm not very happy with the dealings within the group as to how they felt they were dealt or double dealt, but at least they took the initiaive to organize themselves. When these dissenting people met with us, we told them they had the same opportunity with the remaining 50 percent of the people to come in with the same kind of a proposal for the subsurface.

In fact, I said, if you want to come in on a 50-cent-on-the-dollar offer, so long as you agree once the subsurface has been analyzed and worked over, if it's going to cost more, you will pay us more. If it costs less, I'd be willing to argue within EPA to let them get off, even if it costs a nickel on the dollar.

The Government's position, to me, is not how many cents on the dollar on what I knew was at best could be called a back-of-the-envelope estimate, and it's been called terms much more profane than that.

If they are going to come in and do the work and give a bond, I don't care if they get it done through their brother-in-law for a $1.98; the people in Seymour are protected, and as far as I'm concerned the folks who weren't quick enough to get up there and do something like that, let them be left in the dust and on the next site they might be a little quicker on the mark, as witnessed in Envirochem, sir.

Mr. LEVITAS. It seems to me, though, that you make a very strong argument that if the Government had been tougher in 1980 you might have had a much more favorable settlement far earlier than whatever happened after the meeting on June 29.

Mr. BROWN. I'm a regulatory fascist, Mr. Levitas. I believe you should always take people and beat them until the body is left out in the air for all the others to look at it. From then on the others look at it and negotiation is much easier.

Mr. LEVITAS. So therefore you would not disagree that had there been a much tougher stance earlier on—in fact, I'm not simply confining my observations to the failure of EPA to move forward, which I do think was a reflection of Ms. Lavelle's and probably Ms. Gorsuch's philosophy.

I think the State of Indiana, to say that they didn't have the funds, it's a question that they didn't have their priorities worked out in that fashion. I think in either instance that site would have been cleaned up long before it was going to be, based on what you have told me. I think that I would have to draw that conclusion.

Mr. BROWN. As a veteran of more years of Government service than I like to admit, never underestimate the ability of the Government to be confused and disorganized, regardless of the philosophy of the people at the top.

Mr. LEVITAS. Mr. Lucero, if you want to conclude, I think I got the drift of what your testimony is.

Mr. LUCERO. I'd just like to finish on a couple of points to flesh this out. When we put the schedule together, we were doing it before we had any of the benefit of the discussions in either of the tracks. The third track we weren't talking to the parties, that is, the prorata settlement.

But in the first track, the discussion led by Mr. Ramsey and the technical discussions led by Dr. Biros several issues emerged. And again going back to that paper, when we made that schedule originally we didn't anticipate some of those would arise, such as the disagreements, some of which we have talked about and some of which we hadn't; disagreements over the contingent liability issue; the discussions we had about full release, discussions we had about the form of the agreement; we had long discussions about Chemical Waste Management's involvement and whether or not the deal was going to get so controversial we couldn't accept it. All those things gave rise to slowing down to consider what was going to happen.

At the same time, on the prorata side, there was a great deal of difficulty to quality assure the data that would form the basis for the shares. And while we had originally anticipated back in September 2 that it was just a matter of getting the data run completed, the attorneys that were working on it, particularly Ms. Rekar, did an extrordinary job checking out the information and trying to get it resolved, but it took a long time and the issues that we hadn't anticipated came up.

This is all by way of background, and led to a point, and I'm not really too certain of the date that this occurred, but in approximately October 1982, the early part, the first week or so, after discussions with Mr. Brown and Mr. Ramsey, my own staff and all those other factors that I've just mentioned to you, I went to Rita Lavelle and I told her.

I said, regardless of the regional deadline—by this time the deadline had been revised, but were still within the election date. I went to her and I said: I cannot assure you, given the position that the responsible parties have taken, and other problems that we have, that we can make these deadlines, and you should know that. And you should advise anybody who has an expectation.

She thought about it awhile and I think it was in the same conversation but it may have been a later one, she came back to me and said: "If it isn't going to work, don't worry about it. We'll do the best we can. See what you can do."

I communicated that to Mr. Ramsey and I said: "As far as I'm concerned, if we make any deadline, that's just gravy on it. What we should be shooting for is the best deal that we can get. At that point there were still some open issues."

As it turns out, the announcement that Senator Lugar made——

Mr. LEVITAS. Just before you make that point. Did you communicate that change of direction to anybody else in the litigation team, or did you, Mr. Ramsey?

Mr. RAMSEY. Gene can speak for himself. I have to say the answer is I don't recollect I did. And I think the reason that I didn't will become apparent in a second, and that is that with respect to all these deadlines—and I hate to say this in front of my client—I never took them very seriously because my directions on the department side of the street were to get a good deal.

Ms. Walker has already testified about what our instructions were. As Gene says, from time to time we would talk about deadlines, and Senator Lugar was interested in this or that, and my response was that's all very nice, and if we can accommodate that deadline, we will. But I, frankly, never myself personally cared very much whether we made it.

Mr. LEVITAS. Did you communicate to anybody else?

Mr. LUCERO. I'm not sure. I may have told someone on my staff, but I'm really not sure. On October 25, Senator Lugar and Governor Orr held a press conference at Seymour and they announced the impending settlement.

Mr. LEVITAS. Was anybody from EPA there?

Mr. LUCERO. I think there were observers from EPA, perhaps their press office, but I am not sure if there was anyone else. That was somewhat of a surprise to us because we had no agreement agreed to by all the parties. A particular open issue was the position that the municipal corporations would take: they hadn't agreed. So we didn't have an agreement as far as we were concerned.

It turned out, amazingly. Mr. Adamkus, the regional administrator, who was present at the corporation meetings, called Mr. Ramsey and myself, Dr. Biros and, for a period of time although I think he had left by that time, Mr. Brown. We were waiting to see what the decisions would be in the public meetings that were being held by the municipal corporations. He called somewhere around 10 o'clock, as I recall, and said all the parties had agreed and that we were going to be able to sign the agreement. Again, that is the history. There is a great deal of detail I can add.

Mr. LEVITAS. The press conference I am familiar with announced on October 26 was attended by Senator Lugar, Mrs. Gorsuch, and several other EPA staff, including Rita Lavelle?

Mr. LUCERO. No, sir. Rita Lavelle and Anne Gorsuch did not attend to my knowledge and I don't know of any other staff, other than perhaps someone from the press office.

Mr. LEVITAS. Mr. Kyte.

Mr. KYTE. This is just from recollection based on my notes. I believe that there had been some discussion earlier apparently about having EPA officials there but there had been a decision that none would show up. In fact, Mr. Adamkus did not show up.

There had been consideration. I don't believe Mr. Adamkus was at the meeting that night. I believe there was a press person, of the Office of Public Affairs, Mr. Hartian was there observing the municipal meeting and he probably reported back to Mr. Adamkus.

Mr. LEVITAS. I have here a press release dated October 26 from EPA in which Mrs. Gorsuch makes an announcement concerning the Seymour site. Was that announcement made in Washington?

Mr. LUCERO. It was made and announced. Once the municipal corporations had agreed, Rita Lavelle requested and we set up a very quick press conference that was held in Washington.

Mr. LEVITAS. A couple of real quick questions to answer briefly. Did you have any discussions with anyone at the White House or at the Justice Department other than people involved in the Lands Division concerning the Seymour matter?

Mr. LUCERO. No, sir.

Mr. LEVITAS. Do you know whether Ms. Lavelle had any discussions with anybody in the White House other than Mr. Deaver, or do you know what Mr. Deaver's response was to her letter?

Mr. LUCERO. I am sorry. Could you repeat that?

Mr. LEVITAS. Do you know whether Ms. Lavelle had any conversations about Seymour with anyone in the White House other than Mr. Deaver and do you know what Mr. Deaver's response was to Ms. Lavelle's letter?

Mr. LUCERO. I don't know what his response was. She never discussed that aspect with me. I know of only one conversation through a statement that Ms. Lavelle made to me. Sometime—and I can't be accurate—either toward the end of September or the very first part of October, she, Bob Perry, and the Administrator and other Assistant Administrators of the Agency attended a meeting at the White House.

The apparent purpose of the meeting as Ms. Lavelle related to me was to identify things that might occur and whether announcements could be made or not.

The reason Ms. Lavelle told me about this was that she was a little irked. Apparently Mr. Perry at that meeting had told whoever was conducting it—and she never made that clear to me—that he would deliver the Seymour agreement so that it could be announced and she mentioned that to me and we thought about it.

Mr. LEVITAS. The next question is who was the EPA official at the Seymour site that suggested to the receiver that one way to handle the cleanup would be to let each generator come in and claim their own barrels and clean it up?

Mr. Bartel.

Mr. BARTEL. I have no knowledge of anyone that worked for me making that statement. There was an on-scene coordinator there during the early phases who had a tendency to say things that did not necessarily represent in total the way the program was being run.

That would have been Ralph Coons, who operated not under the auspices of Superfund, but under the auspices of section 311 of the Clean Water Act and, in fact, while Mr. Coons was an on-scene coordinator under the 311 program, in fact, I think an industry, maybe, two, removed some 4,000 drums from the site.

Mr. **Levitas**. Mr. Coons no longer works there?

Mr. **Bartel**. No, Mr. Coons no longer works for the Agency. In fact, he is retired at this time.

Mr. **Levitas**. It was my understanding that he was the person that was supposed to have suggested that remedial action?

Mr. **Bartel**. I have heard him make statements like that. I don't know that he made that statement in an official capacity as a representative of the Agency but it would not surprise me.

Mr. **Levitas**. And finally, Mr. Ramsey, did you have any conversations with anybody in the White House concerning Seymour's settlement?

Mr. **Ramsey**. No, sir.

Mr. **Levitas**. Mr. Lucero, one last comment on this and then I am going to move on to Mr. Molinari and Ms. Johnson. One of the things that really does not total up on this is the fact that part of the expedition came from the nature of the site and the hazards it presented and the fires and explosions.

That would be a reasonable conclusion if those things were occurring or occurring for the first time in the first part of 1982 or the middle of 1982. But my recollection is they were having explosions and fires back there as early as 1977 and the US EPA and Justice Department filed suit in 1980 and everybody was still talking about it in 1982.

It was only as that date got closer to November that it seems to me there was a heightened interest in getting something moving on this.

Mr. **Lucero**. You know, I can't really talk about what people thought about or what they did. There are some here who can testify about this in a minute. When I got to the case and when I looked at it and I talked to my staff, Mr. Biros and Mr. Devlin, it was pretty evident to me that this was a serious site and we were really stymied.

While somebody may have waited in the past because they did not know how to solve the problem, I thought it was worth our while to try to make something happen. I particularly remember discussing on the way back from the September 2 meeting with Dr. Biros and he said to me: "You know, for the first time I think we have a chance to make something happen at this site."

There are those of us in the Agency——

Mr. **Levitas**. That was the meeting, if you remember, where the discussion of political deadlines was also mentioned.

Mr. **Lucero**. I agree. And the fact that I was chided by people that I respect is one thing that is difficult. I spent a lot of time having to live with that. If I could have, however, many words that I said back, I would love to have them back. It is a mistake on my part to have ever said that and I swear to God I will never say those again.

In fact, I have practically stricken the word "political" from my vocabulary, if I can help it.

Mr. LEVITAS. I think you ought to expand your retraction to the entire settlement if you want to know the truth, but that is your judgment.

Mr. LUCERO. No. I still believe, Mr. Chairman, that when we looked at this deal and looked at the problem at that site and looked at the other concerns, and it was appropriate for the agency and the Department of Justice to consider this agreement and realize that it was a hard decision. Someone had to make the decision and we decided to take the risk even though it would be controversial.

Indeed, it was controversial. In fact, to my credit I was never able to even predict to my wildest dreams that it would cause this much controversy, but I still believe that we did the right thing.

Sometimes you have to make hard decisions. We made hard decisions and I am sure people will criticize us and raise questions about why we did this and why we did that, but it was a decision that I felt was right.

Mr. RAMSEY. If I may just address that point, as well, with Mr. Lucero, since there has been enormous criticism about the site. As the person who has to, on a daily basis, manage the lawyers who negotiate these agreements, and we have one of these lawsuits in trial, I realize it is not the normal procedure for us to ask you questions, but you asked for us to be candid and I think that candor is important here.

I really would like the committee to tell the executive branch folks sitting at the table, if faced with a similar situation where the Federal Government had no money to spend at the site, no prospect of cleanup any time in the near future whether by preliminary injunction or otherwise, facing long-term, hardnosed litigation with several hundred parties, really what was the alternative here that the committee would suggest to us?

Because there is a cloud over Seymour that keeps us from being able to make agreements except for 100 percent. As lawyers you can understand the difficulty that defense lawyers have in settling for anything other than 100 percent.

They view that as capitulation. I have had those recent words used to me. Laying aside the politics, I think Gene has addressed that in terms of a "mea culpa" that is important. Politics should not play any part in these things. Separate and apart from that are the public policy and legal arguments.

What would you have us do then? We believe in joint and several liability. We think we can hold the rest of those folks for the rest of the cleanup. We had no other way to get the surface clean and I think it is important to have a statement from the Congress.

Mr. LEVITAS. I can assure you you will be getting a statement either from the committee or me, but just for openers I think, as I indicated to Mr. Brown earlier, if EPA and the Justice Department had taken a tougher line earlier on, if the administration had supported the Fithian amendment and made this a Superfund site, so you could have gotten an administrative order and begun to threaten treble damages, I think in this particular instance if the question of when the election was going to come did not play into the minds of these corporations so that they did not have that wall to bat the Government against—I can understand why the Syrians, and the Druze, and all those other people are prepared to kick the United States around if they see these corporations looking at the Department of Justice and EPA in their own country and saying, "hey, man, we are not going to do it. You are going to give us our out or we are not going to play ball," instead of holding their feet to the fire.

I would not phrase it precisely the way Mr. Brown phrased it, but I think there is a lot to be said for letting responsible parties know that there is a price to pay and that price is not diminished by stringing along the Government.

Those are just some offhand suggestions.

Mr. Ramsey. You do understand that staff lawyers have no real impact on what the Congress does with respect to the Fithian amendment. Really, what I am addressing is what should staff folks, faced with that kind of situation, be expected to recommend.

Mr. Levitas. Those are questions, of course, that we will direct to the policy makers. But again, one of Mr. Biros' notes at a meeting on August 23, 1982, "plan needed important to Rita head of Fithian amendment by being responsive."

I am suggesting to you that there was a policy not to support the Fithian amendment which escapes me and seems to work contrary to everything that you have told me up to this point, but nevertheless, that was the position and those are some of the things I would say.

But I have gone on much too long.

Mr. Molinari. Well, I would like to make one or two observations and, Mr. Ramsey, I am not sure this was not a good deal for the Government. It may well have been.

We are raising a number of questions about the negotiations and how you arrived at the final decision in some collateral issues and I think the jury is still out. There is still phase 2 to be done, but speaking only for myself, I am not suggesting that you did less than you should have done.

I think perhaps I have a little different view than the Chairman on the Fithian amendment. And the issue of political pressures, not that he expressed an opinion on that, but as a Member of Congress I would fully intend to use every political pressure available to me to help expedite the cleanup of a problem in my own area.

And if it has been going very slowly, and I start to put greater pressure on and there happens to be an election coming up, so be it.

There might be a reason why. I may have more people climbing around my neck at election time and that forces me and my office to do more. So I don't know that in and of itself the term "political pressures" has such a bad connotation. I jokingly said to the Chairman, now let's not go too far because we don't want EPA to run away every time a Member of Congress calls up and says they would like to have a matter in their district moved more expeditiously because God knows some of them have been waiting around too long as it is.

Mr. Levitas. Let me say if the gentleman would yield, I don't disagree with that at all. In fact, one of the things, with the exception of the allegations relating to the Stringfellow site where there was an alleged withholding of remedial action for political reasons, leaving that type of thing aside, one of the things that has interested me about the position taken on the political considerations is that Shakespearean line: "Me thinks thou doest protest too much."

I doubt there has been an administration since George Washington that has not built dams or roads or sewage treatment plants or done something with an eye on elections and, therefore, as I say, it has always fascinated me that there has been a denial that there was a political track involved here.

Mr. MOLINARI. I think we agree wholeheartedly with what you say. The Congress would be very much in the wrong if somebody was holding up the cleaning up of a site for political purposes. Obviously we have a health consequence there that is very serious indeed.

I would like to turn to Chemical Waste Management because that is an area that I find very troublesome.

Is there anyone here that can tell me how Chemical Waste Management first got involved in negotiating for the cleanup of the Seymour site?

Mr. LUCERO. I am not sure we have anybody that can answer that question, sir.

Mr. MOLINARI. How did Chemical Waste Management initially get involved in negotiating the cleanup settlement agreement with EPA?

Mr. RAMSEY. Let me give you my recollection and everybody can take it from there. When I came back from vacation and got to the table and started——

Mr. MOLINARI. When was this?

Mr. RAMSEY. This was in September. I was on vacation and got back, I guess, right at Labor Day, and was set to go negotiate because I did it with these other folks here. I don't know whether folks at the Agency told me or Mr. Topol told me that they had contracted with Chemical Waste Management to do the cleanup.

They were touting their good package that they had, total cleanup of the surface with one of the biggest and most reputable cleanup outfits at the time. Quite honestly, I have never asked very much and no one has ever really offered very much from their side of the table about how Chemical Waste Management ever got involved in the deal.

Now, if other folks were negotiating a technical package or someone else knows more, it would be news to me frankly.

Mr. LUCERO. Mr. Molinari, there was only one other thing I think that I can add and it is based on information provided from others that as we mentioned or as someone mentioned, I think, in an answer to one of the questions, the Bayh group proposal was for $4.5 million.

That was the first offer. That was calculated against three separate bids. One of those bids to the Bayh group had come from Chemical Waste Management or was in the vicinity of $9.8 million or something like that.

To our knowledge that is the first time they were involved at the site.

I don't know that anyone else here can add more information.

Mr. MOLINARI. Mr. Kyte.

Mr. **Kyte**. Excuse me. Looking at my notes recently, IBM and their representatives were involved with the Bayh group and there were three companies, consultants that they had gotten estimates from. I believe Chemical Waste was one; $10.5 million they had gotten from them, but there was some conversation during the meeting that they could probably come up with a lower bid if it went out competitively.

I think that is where the 9.8 figure came out. That was the first time I was familiar with that.

Mr. **Goodloe**. When we got the proposals from the company on June 9, 1982, Mr. Bob Morris of IBM indicated at that time that Chemical Waste Management had been hired as a consultant to IBM for all of their waste management problems, I believe. That probably is the beginning of Chemical Waste Management's involvement in this case.

That is going on recollection. I don't have the memorandum in front of me, but I have in mind pretty firmly that as Mr. Morris' part of the presentation, they had hired this firm to advise them on all of their waste management problems and from that time forward Chemical Waste was probably involved.

Mr. **Molinari**. Were they not one of the settling parties in the Topol group?

Mr. **Goodloe**. That is correct.

Mr. **Molinari**. So they were wearing two hats. They were the party defendant in effect and at the same time they were being asked to cleanup the mess created by themselves and others?

Mr. **Goodloe**. They were not being asked by the Government, as I understood that, but you may want to address that to Mr. Ramsey. That is, they were not being asked to——

Mr. **Molinari**. They were being asked, told, or whatever, that the corporation that they purchased was one of the parties that dumped at the site.

Mr. **Goodloe**. So asked as a responsible party—yes, you are right. I am sorry. They would have been a responsible party being called forward to come and do the cleanup, yes, sir.

Mr. **Molinari**. That is what puzzles me. It seems to me that we are certainly dealing with the appearance of impropriety or a possible conflict of interest when we have Waste Resources of Tennessee putting up $100,000 as the minimum sum required to be involved in a settlement agreement and at the same time they were a subsidiary of Chemical Waste Management, Inc., the same company that is going to do the cleanup work. Does that not create a problem?

Did it create a problem? Did it create any discussion?

Mr. **Ramsey**. There are several questions. Let me deal with the earlier ones first. It is not only not unusual, it is our first line of attack to seek to get the people that cause the problem to clean it up themselves.

For example, in the *Petro* case we have a consent decree with Shell, Dow, Ethyl, Exxon—you name them. There are 10 companies. They are responsible for doing the work.

It has long been the Agency's position in hazardous waste cases that on the first bounce we want those people to do it. If they are capable in-house of doing it themselves, that is good as long as the technical proposal is acceptable. The technical folks over here can address themselves to what the policy is.

Mr. **Molinari**. Before you leave that, do you not look at the track record to see whether the company is good, bad, or otherwise?

Mr. **Ramsey**. Sure, we want to be sure that they can do a good job, but the plain fact of the matter is that most of the people in the waste hauling industry—and Frank and Gene, I think, really should address this—are going to be generators at most of the sites just the way the United States is a generator at most of the sites.

Mr. **Molinari**. That is something we are going to be looking at ourselves as far as the subcommittee is concerned, but the record is replete—and I appreciate, Mr. Ramsey, your volunteering an answer, but I would like to hear from some who have more direct knowledge of the matter.

The record is replete with references to questions that were raised by EPA management people as to the advisability of using Chemical Waste to do the cleanup work.

Now, if I saw it once, it might not have bothered me, but when I saw it time and time and time again, I had to wonder why is it that this company was selected after there seemed to be so many questions that were raised concerning their past record.

Mr. **Lucero**. I guess there are a couple of points I would like to give you to think about on this. I can't say that I know every reference that you saw, but what I would like to make clear was one of the discussions that we had repetitively within the Agency when we were considering whether or not we could accept this deal was how it would play.

Obviously even if it is absolutely correct, but it does not play well, that is a factor that the Government has to think about. We become concerned because we were aware of Chem Waste Management having been selected by the IBM group.

We did not select them. Mr. Brown has mentioned, and as I will state now, we felt that it would have been easier to allow this consent decree, once it was agreed to, to go forward if those questions had not been raised.

The questions that were being raised concern the Lawry Landfill and we were aware at that time of allegations and we had conducted an investigation and, as I mention in my statement, those allegations and that investigation have led to a 3,000A RCRA complaint against that company for management practices at that site, but we were aware of it.

The difficulty we had—and I want to relate to you at least the discussion that I recall with Bob Perry, and I am not personally sure who else was present, but there were several. We brought this issue up with Mr. Perry, and he was the Agency's lead attorney for these matters, and said: "We have these allegations, but they are unproven. Do we have any legal basis upon which we could insist that this company be removed?" Mr. Perry's advice, to paraphrase it, as I recall, was: "Since we don't have a conviction and we don't have any kind of adjudication, the Government can't be in the position of prejudging the case and we can't insist on it."

Notwithstanding that, we asked Mr. Ramsey in one of his negotiation sessions to try to raise that issue and point out the difficulties in appearances that it might present us as I think I mentioned in the testimony, but if I didn't, I will state it now—the IBM group was fairly insistent that they were not going to make an adjustment in the arrangement that they had worked out. We felt at that point that there was not much more that we could push on.

Mr. **Molinari.** I am not so sure I understand that last statement. You mean that if somebody else was selected to do the cleanup work that the IBM group might not have gone along with the settlement?

Mr. **Lucero.** We did not select them, sir. They were selected by the IBM group of 24.

Mr. **Molinari.** Who contracted with them?

Mr. **Biros.** Mr. Molinari, I might be able to answer that.

Mr. **Molinari.** First, who was the contract with? Chemical Waste and whom? I don't have a copy of it.

Mr. **Biros.** Well, the initial contract to come up with a cost estimate for the surface removal work at Seymour involved IBM and Chemical Waste Management, to my understanding. The ultimate contract for surface removal for the actual implementation of the work was probably a contract established between the trustees and Chemical Waste Management.

In all this, the Agency was not involved. We basically allowed the IBM group to enter into whatever group dynamics they chose so as to come forward with the proposal. As a matter of fact, EPA has never endorsed a policy to either dictate or approve any particular contractor for any hazardous wastesite cleanup.

Frankly, at the time, even though people expressed reservation about using Chemical Waste Management, no one could come up with another contractor that at the time would be, so to speak, clean.

The hazardous waste management problem nationally was just being addressed under RCRA and CRCLA and, frankly, it would have been difficult to find a really large, experienced hazardous waste management firm who was clean because of past association with sites that were not regulated under either RCRA or CRCLA.

So Chemical Waste Management, because of the fact that there was no administrative or judicial undertaking by any Government agency against them, was just as acceptable as any others.

Mr. **Molinari.** Dr. Biros, did you raise any questions about Chemical Waste Management and your concern as to their ability to perform or their record?

Mr. **Biros.** Well, my concerns were similar to those that have already been expressed by the panel, namely the connection between Mr. Sanderson that I was aware of, although I had no personal knowledge of it, the association with Lowry Landfill that Mr. Lucero mentioned, and I knew that they were under investigation in at least one other EPA region.

However, in speaking with an official from EPA's region 8 where Lowry Landfill is located, there was no indication that any action, administrative, judicial, or otherwise, was going to be taken at any time soon against Chemical Waste Management because of lack of evidence.

On the other hand, Chemical Waste Management was a large firm. They had a number of permanent facilities. They had a national reputation. As a matter of fact, at the time they may very well have been the largest and most experienced hazardous waste management firm in the country, and certainly were experienced and technically qualified.

They had the technical expertise to handle the job, frankly. Their proposal was good.

We worked with Bob Morris of IBM, and others, to develop that into one that was acceptable to the Government, including the State. The surface cleanup details were, in fact, satisfactory to the governments as finally negotiated.

Mr. Brown. Mr. Molinari, as one of the principal EPA naysayers raising concerns about Chemical Waste Management, I would point out that technical people assured me and convinced me that the performance requirements and the EPA ability to supervise the cleanup would remove any question, regardless of who was doing it in this agreement, that the surface cleanup would be done properly. The very unique bond, which Dr. Biros and several other people put a tremendous amount of time into, that they received here assuring that if something were to happen to the financial ability of the company because of their other troubles we were worried about, assured that there was the money and the mechanism to continue the cleanup according to the agreement.

So once those two things were presented to me, I did not care if it was an adjunct of the development; we knew that site going to be cleaned up.

Mr. Molinari. Did there come a time when there was some problem with their disposal of waste at the site despite the fact that they were being monitored by EPA?

Mr. Brown. I understand from conversations with region V but for the drivers we may never have known, but evidentally there was a traffic accident in which they were found to be headed toward the wrong disposal facility.

Mr. Molinari. That is one of my concerns, Mr. Brown. It took an accident for us to have knowledge today of the fact that they were taking some of the material from the site and dumping it at a site that had not been approved, had not been one of the six sites that were in the consent decree. We don't know how many other occasions like that that might have occurred because the driver does not have an accident every time he takes the truck out, but certainly I would have a question in my own mind as to any monitoring that took place.

Maybe I am a Monday morning quarterback, but looking back at what you said concerning the monitoring that was going on by EPA, I wonder how that monitoring occurred and how good it was when it took an accident to bring to our attention that these crushed barrels were being taken out.

Mr. Lucero.

Mr. Lucero. I would like to introduce the on-scene coordinator who I think can respond with details to the questions you were just raising.

Mr. Molinari. Well, I would get to the on-scene coordinator in due time. I am just not ready for that yet.

Mr. Lucero. OK.

Mr. Levitas. Ms. Kush, would you raise your right hand?

[Witness sworn.]

Mr. LEVITAS. State your name and title for the record, and then when Mr. Molinari is ready, he can proceed.

Ms. KUSH. My name is Beverly Kush. I am EPA's on-site coordinator for the Seymour recycling site.

Mr. MOLINARI. We do know that there was an investigation going on at the Lowry Landfill at the time that the contract was accepted. I think that was your testimony, Mr. Lucero.

Mr. LUCERO. Yes, sir.

Mr. MOLINARI. What was the extent of your knowledge? What was your understanding concerning the infractions or violations they were accused of?

Mr. LUCERO. It is a little hard for me to recall at this time all of it. I did talk to the regional people and I did review the facts and I believe perhaps Mr. Brown talked to his counterparts. I am not sure, but it was being handled in the region between the technical folks and the attorneys.

We reviewed the allegations and they concerned, as I recall, essentially questions surrounding possible double books and something else that I don't remember.

Mr. BROWN. It is the question of whether they had been reported or whether they came from the landfill.

Mr. MOLINARI. Subsequently they were fined by EPA for violations?

Mr. LUCERO. Yes.

Mr. MOLINARI. How much were they fined?

Mr. LUCERO. I would have to look at the orders.

Mr. MOLINARI. Is there anybody here who has knowledge of the amount of that fine?

Would $48,500 strike a bell?

Mr. RAMSEY. I was going to say $48,000, and somebody said $20. I think that is right. There is an administrative penalty and I don't recollect, but I think it is $48,000.

Mr. MOLINARI. Mr. Ramsey, wasn't there an occasion when you had made a recommendation that a fine be levied against Chemical Waste Management for their activities in the cleanup in Seymour?

Mr. RAMSEY. Yes; that was not just my recommendation. It was at a time when Ms. Kush and the other folks in region V reported violations of the consent decree in taking waste to unauthorized landfills, not transporting the waste in accordance with RCRA requirements, and there was another variance that had to do, I think, with the construction of a drum-crushing site. My memory is better than I thought. There were violations in our view of the consent decree. We met with Chemical Waste Management and the trustees, IBM, and I think Cummins, and General Motors, as I recollect, in Chicago, and I think laid down the law to them that we expected this to be a by the numbers cleanup, and that if they thought they were going to do that kind of shoddy job, they were wrong, and that they were to forthwith construct a drum-crushing area the way we thought it should be constructed, not the way the people on-site thought, and we wanted stipulated penalties under the consent decree which they paid.

They promised at the meeting, and my subsequent indications have been—and really Beverly and Larry are best able to address this—that they promised at the time to put special effort into this cleanup, to put extra staff and their best people on it and that they would do this in as good and professional a way as they could. I think that the trustees also had a fairly heated session with them in which they let them know in no uncertain terms that there were not going to be any variations or sloppy procedures followed at that site.

Mr. MOLINARI. Do you recall making a recommendation or submitting a recommendation of a dollar fine?

Mr. RAMSEY. It was not so formal as that. What it amounted to was I arrived at the meeting when it was already in progress. They were talking about how much money to ask for.

Someone suggested $2,000, and someone suggested $2,000, and I said $3,000. That is what we asked for and that is what they paid. I think 6 days of violation were the way we counted it, the maximum we could have recovered for. We made a demand for some sum that we considered to be significant, but there was no real formal recommendation.

Mr. MOLINARI. I have a memorandum here indicating that you had recommended an $11,000 fine and I think $3,000 was the figure that was settled upon.

Mr. RAMSEY. I, frankly, don't recollect recommending that we recover $11,000.

Mr. MOLINARI. I think that was the recommendation.

Mr. KYTE. I believe that there was one meeting with the agency attorneys and everybody else that was involved in a kind of a premeeting before we met with Chemical Waste and the trustees, and $11,000 may have been a number that we discussed totaling up what we could get if we went day by day. Steve Ramsey, Goodloe, and Hammock conferred among themselves after the general premeeting. At that time, I understand they chose that number and it was first announced at the meeting with Chemical Waste. Later I believe Mr. Ramsey and the U.S. attorney and the other staff DOJ lawyer met on the case themselves and the announcement was made by Mr. Ramsey on the $3,000 after that time at the meeting with Chemical Waste.

That was the first I recall hearing the $3,000 figure.

Mr. MOLINARI. Mr. Lucero, before when you talked about Chemical Waste Management you said that at the time of the settlement the company was a reputable firm. I think that is what you said.

Mr. LUCERO. That is right.

Mr. MOLINARI. Do you have the same opinion today?

Mr. LUCERO. I don't have any information at the moment that would lead me to a substantially different conclusion. There are some things that I just can't discuss in this session.

Mr. MOLINARI. Are they questions of an investigative nature?

Mr. LUCERO. I am really in a position that it is the Agency policy not to discuss ongoing investigations. I can neither confirm or deny that.

I would be willing that if the committee would like to go into executive session to discuss that with you privately. The public forum is what creates the problem.

Mr. Molinari. The chairman has agreed that we will consider an executive session or perhaps a briefing at which we can get that information.

I asked the Indiana Attorney General's Office whether Chemical Waste Management might have been under independent investigation by the attorney general in Indiana. To the best of my knowledge the answer that we received was they did not know, but there were two additional investigators that had recently been hired.

The way the answer was framed, I got the impression that there might have been a causal relationship between them.

I will reserve questions about that until we have an executive session. But let me ask you this.

The negotiations over what was to be done in cleanup, the final negotiations were embodied in this document which is exhibit B. Does this look familiar to you gentlemen out there? Particularly, I am going to be talking to Mr. Biros and Mr. Garrahan.

Mr. Biros. Yes, sir; that looks like the exhibit B attachment to the consent decree which would constitute the approved technical proposal from Chemical Waste Management.

Mr. Molinari. Mr. Garrahan, have you seen this recently?

Mr. Garrahan. Yes, sir; that is exhibit B.

Mr. Molinari. I would like to ask both of you, how does this document differ from the original proposal? How does the final proposal differ from the proposal that was submitted originally by this group?

Mr. Garrahan. I think, first of all, the monitoring has been added to the final proposal that was not in the original proposal.

Second, I believe provisions for a truck wash were also added. This would have rinsed out any hazardous wastes that were on the site before leaving the site. It would spray the waste off the truck.

Mr. Molinari. Any others that you can recall?

Mr. Garrahan. They don't come to mind right now.

Mr. Molinari. Were you present during the negotiations when the changes were made?

Mr. Garrahan. During some of the negotiations.

Mr. Molinari. Mr. Biros, do you have anything to add to that answer?

Mr. Biros. What I can add from my recollection is that some of the original proposals did not contain any provision for contaminated soil removal to the same extent as the final exhibit B does. The final exhibit also contains a requirement that Chem Waste Management provide, I believe, three changes of charcoal for the water treatment system. This also was not in the original proposal.

I would concur in Mr. Garrahan's recollection of the air monitoring aspect and the other aspects that he mentioned.

Mr. Molinari. Mr. Kyte, do you know of any other provisions that were added in the final version that were not in the original version?

Mr. Kyte. I have a memo in the file which was based upon a conversation with Beverly Kush. She might be able to add one or two to this.

Ms. Kush. There were a couple of other things that were not addressed that we had them add in. One was to remove the sludges that had been left in bulk storage tanks on-site following our 1980–

81 311 actions. Also, their plan did not include any type of site security during the cleanup operations which we felt was important.

There was also some question in relation to sampling procedures how they would be sampling drums.

Mr. **Ramsey**. There was a dispute at the end of the drum crushing with respect to whether Chem Waste had responsibility for removal of bulk storage tanks. That really was addressed in the negotiations, but it is additional work that I understand Chem Waste Management finally did which was an additional cost that they had not planned for. But that is not in the nature of an addition to the negotiation so much as that at the end there was a dispute as to whether it was or was not covered.

We said it was and they said it was not, they went ahead and did it.

Mr. **Molinari**. What were there, some 90 or 100?

Mr. **Ramsey**. Ninety-eight, I think. I forget how many ultimately the dispute was about.

Mr. **Molinari**. Was it somewhere in the vicinity of 90 or 100?

Ms. **Kush**. The 98 figure came from bulk storage tanks that had been addressed under EPA's emergency response actions. When we inspected the site with representatives from Chemical Waste Management and the trustees during the cleanup to look at the tanks onsite, we discovered that there were, in fact, some tanks in buildings that we had not addressed under the 311 action but which we felt should be covered under the current cleanup plan. That brought the total up to approximately 115 or 116.

Mr. **Molinari**. I did not get the answer as to whether there was additional compensation for that.

Mr. **Ramsey**. No. This is not really something the Government is necessarily privy to, but I think there may be some dispute between Chem Waste and the Trustees as to whether they are going to get interest on the money that was placed in the cash account to cover cost overruns.

I think the agreement was if interest was earned and there were cost overruns, that there would be discussion as to whether that would be applied there. I think this is one of the matters that is sort of in the yet-to-be-decided category, but I am just not sure.

That is really something that can best be addressed by the parties themselves.

Mr. **Molinari**. Mr. Biros, did you have any conversation with any of the representatives of Chemical Waste Management regarding a permit or a lack of permit for the Vulcanus incinerator?

Mr. **Biros**. I don't recall any conversations with anyone from Chem Waste Management specifically on that issue.

Mr. **Molinari**. I take it you had conversations with someone else?

Mr. **Biros**. Well, during the context of the technical negotiations, the lead for the generators was generally Bob Morris from IBM, and we discussed the six sites that were to be used in exhibit B as either treatment or disposal facilities for the waste at Seymour and the permit issue with respect to each one of those including Vulcanus was raised at these meetings, and we were interested, of course, in ascertaining that permits were available for each.

Our best information at the time internally was that the Vulcanus was about to be permitted by the Agency.

Mr. **Molinari**. Was it?

Mr. **Biros**. My understanding is that it was, although the permit was somewhat restrictive.

Mr. **Molinari**. Was there any information that the incineration slip was being used before the permit was issued?

Mr. **Biros**. By CWM with respect to the Seymour waste?

Mr. **Molinari**. Yes, sir.

Mr. **Biros**. Not to my recollection. I have no knowledge of that.

Mr. **Molinari**. What system was used in verifying that the six sites in question, including the slip, were duly permitted?

Mr. **Biros**. Well, with respect to the Vulcanus, our Office of Water was consulted. With respect to the others, we consulted with region V personnel. The other exception was the Alabama facility, which is in region IV. We checked with our region IV personnel, concerning the Alabama facility.

The other four facilities are all in region V.

Mr. **Molinari**. We have in our files a document entitled "Seymour Recycling Coal Negotiations, Settlement Options." The paper under Topol group settlement issue number two involving a consent decree versus agreement states that there is a problem in that the Government wants a consent decree and certain potential settling parties do not.

Under rationale it states, and I quote:

> Government position, given sensitivities of the case (including possible criminal liability of Chemical Waste Management, Sanderson connection, complaints from parties not allowed to participate) Government must show that deal is fair and fully protects the public.

Now, I would like to know who is the author of that document.

Mr. **Lucero**. Congressman Molinari, this is a document, as I recall, that I asked Dr. Biros to prepare. I made some comments on it and then I used it as a briefing document to use with Rita Lavelle.

Mr. **Molinari**. This document was prepared by Dr. Biros?

Mr. **Lucero**. Yes, sir. As based on our understanding and our knowledge of the discussions that we had.

Mr. **Molinari**. Then let me ask you this first. There is no date that I can see on this. Can someone give me the date that this document was drawn? Do you have a date on the copy that you have?

Mr. **Lucero**. No, sir. You have, I am sure, the same thing that I have because this is a copy, as well.

Mr. **Molinari**. You have written on top "copy 103, do not copy."

Mr. **Lucero**. Yes, sir.

Mr. **Molinari**. Whose handwriting is that?

Mr. **Lucero**. It is mine.

Mr. **Molinari**. Why did you put down "do not copy"? Do you recall?

Mr. **Lucero**. Basically, I thought this was an extremely sensitive document and it was not one that I wanted to have lots of copies floating around. It was intended to be the basis for a full and candid discussion to talk about the pros and cons of the directions that we took with my supervisor, Rita Lavelle.

Mr. Molinari. Well, can you pinpoint about when this was prepared?

Mr. Lucero. So far as I know, I think it was toward either the end of September or the first week or two of October, but I am really not certain. It may have been the middle of October.

I just can't be certain.

Mr. Molinari. Is that your handwriting on the bottom of the first page, as well?

Mr. Lucero. Yes.

Mr. Molinari. What do you mean on the bottom there where you have "Gorsuch, too"?

Mr. Lucero. Yes.

Mr. Molinari. What is that? What does that mean?

Mr. Lucero. The issue there was whether or not there was a natural resource damage claim that should be raised and in the negotiations the issue came up about whether or not the Federal Government—we were not dealing with the State's issue—whether the Federal Government had any such claim to make as the responsible parties in the negotiations wanted a release from all natural resource damage claims. Before we could agree to that, we needed to have the Department of Interior make an assessment as to whether any Federal resources were damaged in the area.

It was just a thought we had that it might speed up getting this assessment if the Administrator were to talk to the Secretary. As it turns out, it was just an idea that was never necessary.

Mr. Molinari. Due to sensitivities and the possible criminal liability of Chemical Waste Management, is that something you can speak about now or is that something that in your judgment would be best left to an executive session?

Mr. Lucero. I think it is best left to an executive session.

Mr. Molinari. Was there a discussion of this document at any meeting prior to the time you sat down and finalized your agreement with the 24 settling parties?

Mr. Lucero. This was prepared as an internal document within OSWER, and I intended to use it to discuss with Rita Lavelle and no one else. I can't be certain whether or not I used it as a discussion point, but I don't believe I did.

I think it was just with Rita Lavelle.

Mr. Molinari. You discussed it with Rita Lavelle before approximately when?

Mr. Lucero. I guess you have to back it up against this time line. The Agency had the consent agreement essentially mapped out and it was coming back to the decisionmakers to make decisions on both sides of the table, the responsible parties and the Government.

As Mr. Ramsey testified earlier, he prepared a decision document that he provided to Carol Dinkins. While this is nowhere near that level of detail, this was sort of a set of talking points that I wanted to go over with Rita Lavelle to see whether or not she agreed with the basic set of decisions that have been made.

The thing that I am not certain about is whether we had the issue, because it is set up as options. It may have been at the point where we did not have a complete settlement and that these were still open issues.

In fact, now that I look at it, I think that is probably more realistic.

Mr. Molinari. How about the question of possible criminal involvement? I am not going to get into the issues themselves becuase we have agreed we will have that for a subsequent date in executive session.

Was that possibility discussed with Rita Lavelle?

Mr. Lucero. Yes.

Again, I am not absolutely sure that I am remembering correctly. There was a meeting and I am going to try to fix this.

Mr. Ramsey just suggested this to me and I think this may be right. There was a meeting when the issue was open as to what the consent decree, or for that matter, there were several open issues, whether we would use an administrative order or a consent decree, how the parties would be put onto the agreement, whether it would be primarily Chem Waste and 24 getting off or whether the 24 would still be on, and you can see that some of these points are raised in here.

The meeting, I believe, was toward the end of September, maybe September 26 or so, that Mr. Ramsey had beaten his head against the wall telling them that this just was the Agency's position. They were unsatisfied with that and they wanted to have an opportunity to talk to Bob Perry and Rita Lavelle.

In order to prepare Rita Lavelle, I think I used this document to go over the issues so that she would have a feel for that discussion. It was followed by a meeting where Rita Lavelle and Bob Perry and myself and someone from the Office of Enforcement Counsel, Ed Kurent, where we sat and for 3 hours we hashed over whether the final decisionmakers could find this acceptable and what positions they would take in that meeting.

The meeting was held the next day or so, as I recall, and it was a most unusual meeting.

Mr. Molinari. I can imagine.

Dr. Biros, you have some notes before you, and you can refer to those if you would like. But between your notes and your own independent recollection, what concerns do you recall being expressed to you about using Chemical Waste Management as the cleanup company?

Without looking at notes, do you have any independent recollection of people having a discussion with you or your sitting in on a discussion where people raised some questions about the advisability of using Mr. Sanderson's client, Chemical Waste Management?

Mr. Biros. The fact that Mr. Sanderson had been associated with Chem Waste Management was one concern. The other was that the firm was under investigation by our region 8 office in connection with Lowry landfill. And I recall some other somewhat vague discussions about possible violations in region 2, if I am not mistaken, concerning Chem Waste Management. Those were essentially the concerns that were expressed in the meeting that I attended.

Mr. Molinari. Now, who mentioned those concerns to whom? Let's get down to individuals, if we can.

Mr. Biros. Well, the Seymour meetings that occurred with the agency involved the Department of Justice, and usually participants were myself, Mr. Lucero, Mr. Ramsey, Mr. Brown, Mr.

Burack. Whenever Mr. Kyte was in town, it would involve Mr. Kyte, as well.

Mr. **Molinari**. They are the ones that were present at the meetings?

Mr. **Biros**. Yes for most meetings. There were a large number of meetings; I would say at least a dozen or more perhaps. And at various meetings there were different personnel. In fact, Mr. Schaeffer from region 5, I recall, was at at least one of them.

Mr. **Molinari**. Let me try to rephrase the question. Maybe we can save some time.

There are some notes in your writing indicating concerns that some people, maybe your own, had about using Chemical Waste Management. And I am asking you, before you look at your notes, whether you have any recollection of anyone raising concerns while you were present about the advisability—not who was present at the meeting when this was discussed, but specific individuals who said: "Hey, we ought to stop and think about using this outfit or agreeing to it"?

Mr. **Biros**. The concerns were expressed by Mr. Brown, Mr. Ramsey and Mr. Lucero and myself.

Mr. **Molinari**. Anybody else? Is there anybody else on the panel or anybody else that has been sworn in here today who raised concerns about Mr. Sanderson and/or any of his companies with relationship to the Seymour job site?

Ms. **Walker**. Congressman Molinari, both Mrs. Dinkins and I had a concern about Chem Waste Management doing the work. No concerns about Mr. Sanderson's involvement because I don't think at that time I had any personal knowledge. Certainly, Mrs. Dinkins and I did not discuss it. In fact, all I know about that is what I read in the newspaper.

But we did have a concern about Chem Waste Management doing work for the cleanup and we discussed that with Mr. Ramsey. We were provided with what we believe were reasonable assurances as to the Government being protected for cleanup work to the Agency's satisfaction, suitable penalties should they not comport exactly with the consent decree requirements and on that basis agreed to, and did, approve the consent decree. But each of us had concerns and discussed them fully with Mr. Ramsey.

Mr. **Molinari**. Anybody else?

Mr. Kyte.

Mr. **Kyte**. I don't recall myself stating any specific concerns on this. But I do remember discussions with negotiation team members of Mr. Biros and Mr. Ramsey and John Hammock with the knowledge that there was possibly a problem, that Lowry landfill was being looked into.

I think the consensus was that if we had adequate safeguards with our knowledge at that time, at this stage of the investigation, that it would be well to go forward. And I think also there is an understanding that a company as large as this, with knowledge of the hazardous waste industry, that you are not going to have anybody that is perfectly clean in this.

Those are just my judgments that I considered when it came up.

Mr. **Ramsey**. My concern with respect to this—really, I suppose they are twofold—is in the nature of counseling and advice to the

Agency as their courthouse lawyer in this matter. Really, I think it affected two issues. One, I think, is the consent decree versus the administrative order issue; in other words, the form of the agreement, whether a consent decree would be used or not. And the second was what the public would think of this; would the public think that their interests were being protected. The two really are interrelated.

I first heard that Mr. Sanderson had anything to do with Chem Waste Management, I guess, when we were on the west coast in a national enforcement conference meeting some time in the second week or so of September, and that there might be a perception problem. My recollection is, then and throughout—and anybody else here may have different recollections—but certainly Mr. Sanderson was not the lawyer for Chem Waste Management. We dealt with their lawyers on two or three occasions. They were present at the hearing. They were present when we talked to them when they violated the consent decree. And there was a negotiation, a very brief negotiation, about stipulated penalties during the negotiations, and the consent decree itself.

My concerns, the ones that I expressed internally within the Department, were sort of twofold. If the allegations that we said we will discuss privately with the committee should have eventuated—and they did not—what would the public appearance and the public perception be, and how would the public feel and how would the Government look in having approved a consent decree in which one of the parties was alleged to have violated a regulatory scheme, either in a civil or criminal fashion. That really related to the degree of scrutiny that was appropriate.

Whether it was appropriate then, as some believed, to enter just an administrative order so the work could begin immediately, or whether this agreement was better submitted to the scrutiny of the court, and whether it was just better as a matter of policy generally in these kind of enforcement cases to do them in a judicially enforceable method by means of a consent decree—that was an issue that was discussed and debated. And ultimately the consent decree route prevailed. That is the context in which that issue came up, as I recollect it.

Mr. MOLINARI. Before we go on with that, I have been asked to have a humanitarian pause in the proceedings, and we will reconvene in about 5 minutes. And, Mr. Brown, we will hear you and others.

Mr. LEVITAS. The subcommittee will stand in recess for 10 minutes.

[Recess.]

Mr. LEVITAS. The subcommittee will please come to order.

Mr. Molinari.

Mr. MOLINARI. Mr. Burack, would you please step up to one of those microphones? I understand that you have a pressing engagement, and I think that we can oblige your request by asking just one or two questions.

Mr. BROWN. Just before Mitch goes, I just wanted to add to the record that we had before the break the other reason the discussions Mr. Ramsey was outlining were taking place is one of the proposals was to have only Chemical Waste Management on the consent decree—not the 24 parties. That was one of the reasons that the concern for Chemical Waste was elevated.

Mr. MOLINARI. Thank you.

Mr. Burack, one or two quick questions.

Do you know Mr. Sanderson?

Mr. BURACK. I know of him. I never met him.

Mr. MOLINARI. You never met him. Did you ever speak to him by phone?

Mr. BURACK. No, I haven't.

Mr. MOLINARI. And have you in the course of your business come across any memorandums or documents referring to Mr. Sanderson and, in particular, the contract with Chemical Waste Management for the cleanup of the Seymour dumpsite?

Mr. BURACK. I am really devoid of any information about Sanderson, Chemical Waste and the things we have been discussing the last few minutes. I know mostly what I have read in the news.

Mr. MOLINARI. I will take that, and in that case excuse you so you can get on with your farewell party. Thank you for coming.

Mr. LEVITAS. Mr. Burack, let me ask you this: The memorandum that you wrote on June 8 concerning the proposed meeting with the Bayh group—which, without objection, will be made a part of the record, as well as the memorandum you wrote October 8, 1982—it also will be made a part of the record, without objection—and if you need to refer to this for my question, feel free to do so—but in the June memo that I referred to, my recollection is you expressed some concern about the speculative nature of the $30 million figure which was the worst case scenario.

Now, that being the case, if you had concerns about the $30 million which was for subsurface as well as the ground cleanup, and it was indicated in another memorandum which we have identified that the subsurface would be more costly than the surface cleanup, why wouldn't you have some concerns when you looked at the IBM proposal about some uncovered liabilities that might exist?

Mr. BURACK. Well, I think what made me comfortable with the IBM proposal was, rather than agreeing to pay a certain sum of money, they were agreeing to do the surface at whatever cost. In terms of cash, we are talking about $7.7 million, plus a performance bond, plus a large company standing behind the agreement with their own corporate assets.

So in terms of looking at it as a $22 million possibility, I figured the chances of a surface cleanup running that much were pretty slim.

Mr. LEVITAS. What about what was left over, though?

Mr. BURACK. In terms of ground water?

Mr. LEVITAS. Right.

Mr. BURACK. My whole view of the settlement proposal was whatever the ground water was going to cost, we could successfully seek that remedy from the remaining nonsettlers, even if it would be $50 million or $75 million by some chance. We would get whatever it was from who was left. On that basis, it was a reasonable settlement in my mind.

Did I answer your question?

Mr. **Levitas**. I think so, but I am not sure that it follows, because you were also supporting the pro rata cashout as a settlement proposal.

On the pro rata cashout, if the first-tier people get relieved of contingent liability, and then the second-tier, the phase 2 people, cash out, there very well may not be enough resources to do the job because the second-tier cashout, according to some information we will get in just a minute, of those people who are now being sued, the new 50, plus the 200 small generators who cashed out for $5.4 million would come to less than the estimated $15 million.

Mr. **Burack**. I think as your files—my memos indicate, I wasn't thrilled with all the aspects of the pro rata settlement and how we were arriving at all the figures to be used in all of that. However, given the estimate that we had, and it was conveyed to me as a very—if anything inflated rather than conservative estimate, that is they considered the worst-case possibilities for ground water assuming a real bad situation, what it would take to pump out and treat a large, highly contaminated plume of ground water, that that to me is a bona fide worst-case estimate of what it might cost. I think on June 8, my problem was this figure was being tossed about. I had not seen any real solid documentation of it yet. We were being asked as lawyers to frame a settlement around it. I wanted to alert my management that that kind of practice might lead to trouble further on if we were dealing with a soft—a soft number. I think as time went on we became more comfortable with the basis for it, at least in terms of protecting ourselves against it being higher. I am convinced the chances of it being higher are slight. On that basis, I was recommending the settlement as we had it.

Mr. **Levitas**. Well, we will be asking Ms. Kush and Mr. Bartelt some more questions about that. I just wanted to clarify your state of mind.

Thank you very much. You are excused.

Mr. **Burack**. I want to say one thing quickly about Chem Waste business. You may find one or more memos from me in the file. In light of what I said about not having any information, I did report the progress of the meetings with Chem Waste over their violating the consent decree and stipulated penalties in that. I attended a meeting about that. I was reporting to my office, covering that issue. So I was around for that, though I didn't know anything about Sanderson or that element.

Mr. **Molinari**. You said when you were reporting, are you talking about oral reporting or written reporting?

Mr. **Burack**. Both. The region was covering that aspect of the case. I was calling Larry occasionally. I attended that one meeting because it was deemed important by my office as a natural thing.

Mr. **Molinari**. Mr. Burack, the chairman is going to set a date by which all documents that are not available today can be furnished to the subcommittee. I would like you to furnish any and all copies of written reports that you have, that you just referred to.

Mr. **Burack**. OK.

Mr. **Molinari**. He will announce that allocated period of time at the conclusion of this hearing and I am sure someone can let you know.

Any further questions?

OK. Thank you very much.

Mr. **Burack**. Thank you.

Mr. **Molinari**. I would like to get back to Dr. Biros. We talked about your independent recollection. You have had a chance to look at your notes. I am sure your notes reflect concerns that others have had over hiring of Chemical Waste Management. Can you tell us by looking at your notes what references you find in your handwriting that were individuals that expressed concerns about the advisability of using Chemical Waste Management?

Mr. **Biros**. In addition to those I already mentioned, Mr. Brown, Mr. Lucero.

I may need some time to go through these if you want me to go page by page.

Mr. **Molinari**. Why don't you do that? I will ask some other questions.

I would like to ask this question. I hope somebody can provide me with the answer. In my opening remarks this morning, I asked a hypothetical question as to why someone would buy a bankrupt corporation. In this particular case, I understand that the parent company may not have been bankrupt, but the corporation that was involved in being one of the responsible parties was bankrupt.

Why would an outfit like Chemical Waste put themselves in a position to buy a bankrupt corporation and then subsequently come up with $100,000 as one of the 24 settlers?

Mr. Lucero, do you want to respond?

Mr. **Lucero**. I do not have direct knowledge of what their thinking was. I am aware that Chem Waste engaged in a pattern of buying bankrupt corporations.

Mr. **Molinari**. That is what I wanted to get to. There was a pattern.

Mr. **Lucero**. The reason—I have not had a discussion with any officials, but our internal discussions—and again we are sort of just getting, recognizing that a number of these companies they were purchasing had interim status for facilities already in existence, and given the problems with siting new facilities in the country, the purchase of a facility that has interim status is economically beneficial.

Now this may or may not be the reason, but it is the discussion we have had in the Agency. Let me give you an example. If you have a treatment center, a disposal center that happens to have gone bankrupt, but has interim status, it does not lose that status by going bankrupt. A company that wishes to expand its share of the market and wants to have another facility, if it is to build a new facility, must go through the entire permitting process which, as you may know, takes a fairly good length of time to accomplish. By buying the facility, they can begin operations as long as they are otherwise comporting with the requirements of RCRA. That is the discussion we have had in the Agency. Like I said, I had no discussions with the company to confirm or deny that.

Mr. **Molinari**. In the pattern you are talking about, which is of great interest to us, would they buy the assets from the trustee in bankruptcy or would they be actually purchasing the stock of the bankrupt corporation? Are you in a position to answer that question?

Mr. **Lucero**. I am afraid I am not.

Mr. **Molinari**. Is there anybody on the panel aware of what transpires under those situations?

Mr. Goodloe, are you aware?

Mr. **Goodloe**. No, sir.

Mr. **Molinari**. Do we know who put up the $100,000 that was required as a minimum payment by the participants in the initial Seymour agreement? On behalf of that Waste Resources of Tennessee? Anybody have a record?

Mr. **Lucero**. No, sir.

Mr. **Ramsey**. I don't know. It strikes me there may have been something in Mr. Topol's argument at the hearing on the consent decree. I don't rightly remember. I really don't remember.

Mr. **Molinari**. I am just wondering whether we are looking at an agreement that is going to lead to a $7 plus million contract and whether it may have simply been just an opportunity to have an entry into a group that is going to be paying with their money for the cleanup and might give them the inside track on being able to walk away with the contract.

Mr. **Ramsey**. We all are in the realm of speculation, but probably fairly so. My own inclination is to agree with you. To flesh out a couple of other thoughts, we were quite concerned lest Chem Waste Management not be able to be on the consent decree. We want, to the extent we can, to be able to judicially enforce these things against the folks doing the work. It would be interesting—again I am sort of wondering out loud—but it would be interesting to find out the day they purchased the assets of the bankrupt corporation.

The second thing I would say is the Government has taken the position in some other cases—and I think will take the position—that when one company purchases another, whether it is bankrupt or viable, and the purchased company is responsible for disposal of hazardous wastes that results in a RCRA or Superfund suit, we are looking at the assets of the bigger company, the one who purchased it as well. So in that context, our going after Chem Waste or their signing on is not necessarily different from the approach the Government wants to take here. We are taking a pretty expansive view of liability within the meaning of the generator, transporter, or remover of hazardous wastes.

Mr. **Levitas**. Let me push the logic of this. Let us assume for the moment, which I think is a fair assumption, the money does not come from the tooth fairy, it came from Waste Management or Chemical Waste Management.

If the company was in bankruptcy and therefore was not liable for any participation——

Mr. **Ramsey**. Or was capable of obtaining discharge.

Mr. **Levitas**. OK—could you help us? What would be the reason for them kicking in $100,000 of cash?

Mr. **Ramsey**. I can only assume Chemical Waste Management wanted the job.

Mr. **Levitas**. Did they have that buy into the settlement to get the job?

Mr. RAMSEY. That I don't know. But that is what it sounds like. When we discussed the issue of Chem Waste Management with the group, and Larry and Frank can help me out, they indicated that they were, in fact, a generator themselves. As I recollect that is the way it was presented.

I have to tell you that until you just told us today this history of buying Waste Resources of Tennessee or whoever it was, that is the first I heard of it.

Mr. LEVITAS. I am not sure whether it is more than curiosity, but if they are not liable for participation, they could have been discharged. Then somebody could have saved $100,000 unless they had some benefit or profit down the line. I am trying to figure out what that might be.

Mr. RAMSEY. Again we are into speculation. The right folks to ask this are going to be the group of generators who entered into the agreement, but I think the conclusion that I would draw is the following one.

I buy Ajax Corp. that is a generator at a particular site. I am a waste removal company. I want this job because this is in the early phase of Superfund cleanup. I want to be able to demonstrate my proficiency as a cleanup person. I want an inside track. That is one logical explanation, it strikes me.

Mr. LEVITAS. It may be logical to us because we are so close to this thing; but to most people, if you went out and told them that the responsible parties, the people who created the mess, are going to make a profit off of cleaning it up, they would think there is something wrong about that, particularly if the Government starts paying for that to happen.

Mr. RAMSEY. Of course, the Government is not paying for it to happen. But again I go back and I would really have to defer to the Superfund Program people.

I think you will find in most of these cases, Browning Ferris Industries, you name the waste disposer, they are probably going to be generators or liable for transportation or disposal in some way. If they were not the actual generator, they are most likely, at some of the abandoned sites around the country, going to be liable in some way or other or liable for the treatment practices.

While I agree with you that folks should not profit from that, nevertheless, the ones that have managed to stay in business and are viable healthy companies may nevertheless be wearing two hats at a couple of these sites.

Mr. MOLINARI. This pattern we observed, that we hear about, with Chemical Waste Management, is this something that we have observed with other major companies that engaged in the same business, or is it just the experience with Chemical Waste and their corporations?

Mr. LUCERO. It is hard for me to say. The only parallel that comes to mind right now is the Browning Ferris, BFI recently purchased Seacoast, which was a major regional waste disposal transporter organization and has merged together including all of their—the Seacoast facilities. That is the only parallel I can think of. Perhaps someone else has—I haven't really looked into the issue other than what anecdotal information I have.

Mr. **Ramsey**. As I am sure the committee knows, it is—assuming the situation created by the RCRA regulations is as Gene says it is—and I assume it is—we may not like it, but it is probably a pretty smart business practice. It is almost as though a national bank charter were for sale someplace and you could pick it up cheaply. It is that kind of advantage to being able to have interim status as opposed to going through the RCRA permitting process which takes 2 or 3 years and is expensive.

Mr. **Goodloe**. I believe, Congressman Molinari, a newspaper reported that Chemical Waste also bought something called Chem Nuclear out of Seattle or Portland during the summer of 1982. They may have purchased another company during December of 1982. There were apparently other purchases other than just Waste Resources out of Tennessee.

Mr. **Lucero**. Mr. Molinari, Mr. Bartelt would like to add something.

Mr. **Bartelt**. This may take more the form of an opinion than anything else. Given the preference of having a small, bankrupt company owning a facility somewhere and having a major firm that has certain resources attendant to it, I am not altogether sure we want to oppose a firm like Chem Waste Management buying smaller out-of-finances companies and facilities.

From Chemical Waste's standpoint, and I am not defending Chemical Waste, we believe in a competitive process, whoever comes in through that process gets the work. They may be seeking nothing more than capacity. Our experience in region V is that the regulatory requirements notwithstanding, siting a facility, even a well-engineered, well-designed, perfectly sited facility is a very difficult problem. The attitude of "not in my backyard" has and will prevent the siting of some very acceptable technical facilities, in my opinion.

And here was an opportunity for a firm to get a site that has already been sited and has some ability to develop into a fully permitted site. The question, however, there is some speculation; and I think it is healthy speculation, because there is a pattern. So we are trying to determine why. If that were the only reason, the whole ball game, but we are hearing perhaps it—it might not be that so much as just to get their foot in the door where they have a better bargaining position to walk away with a very good, lucrative contract. There is nothing wrong with that. I am just trying to derive at why it occurred and why it would occur. Since there is a pattern, whether somebody could explain the reasons behind that pattern to me.

Mr. **Kyte**. Sir, I can't give you specific cases, but I believe there have been a couple of times in the region where we have had some problem sites where we had viable companies come in, looking to remedy the situation on the site in hopes they would be able to take on——

Mr. **Molinari**. Take on the site thereafter?

Mr. **Kyte**. Right.

Mr. **Bartelt**. To follow that up, one of the early policies we pursued in Superfund cleanups was looking at uncontrolled hazardous waste sites and seeing if there was a way to turn them into a controlled site. Again the whole issue of capacity which is very limited. We need places to dispose of this right now. We need better technology in the long term to be certain; but right now, what to do with the wastes at hand is a big problem.

Mr. **Molinari**. I would like to turn quickly if we could to the question of the estimate of cleanup. I will ask at this point the other question that I said I would explore. The chairman thinks this would be a good time to ask it, and that is whether any of you know Mr. Sanderson's role with respect to the site in question. We have learned from Mr. Ramsey that Mr. Sanderson was not the attorney representing Chemical Waste in this matter. By the way, Mr. Ramsey, you said there were two attorneys?

Mr. **Ramsey**. I don't recollect—I am trying to remember. I think there was only one. I really don't recall.

Mr. **Goodloe**. Bill Jeffrey was the attorney that came to the meetings.

Mr. **Ramsey**. And was at the hearing.

Mr. **Molinari**. Did any of you gentlemen know whether Mr. Sanderson had anything whatsoever to do with this particular contract?

Mr. **Goodloe**. Not to my knowledge, but I don't know anything about it.

Mr. **Ramsey**. I don't know whether he had anything to do with anybody else, but his name never came up from the defendants nor anyone else, nor did he make any calls or contact anybody I am aware of at the Department, nor did any of my folks ever contact or report any such contacts. For that matter, neither did anybody at the agency.

Mr. **Molinari**. So from Justice's standpoint, Sanderson didn't appear on the scene at all?

Mr. **Ramsey**. That's correct.

Mr. **Molinari**. Now looking to EPA, we have information indicating that, as I said earlier, Sanderson had open access as late as this year, had still been observed walking in and out of EPA's offices.

Have any of you gentlemen from EPA any information that Mr. Sanderson was at the office or spoke to any of the officials at EPA concerning this contract?

Mr. **Lucero**. I have no information on that, Mr. Molinari. I don't know what the other people here have.

Mr. **Molinari**. Mr. Biros.

Mr. **Biros**. I didn't hear the question.

Mr. **Molinari**. The question is, do you have any information regarding whether Mr. Sanderson was in any way involved with the discussion of the Chemical Waste contract regarding the Seymour site with any officer of EPA or by phone?

Mr. **Biros**. No, sir. I have no knowledge of that.

Mr. **Molinari**. Anybody else here from EPA? Any knowledge of Mr. Sanderson contacting EPA relative to the Seymour site?

Mr. **Lucero**. They all seem to be shaking their head no, Mr. Congressman.

Mr. **Molinari**. OK. Let's turn then to the estimate of cleanup. We have a $30 million estimate for cleanup which is allegedly split in two, $15 million was estimated to be the approximate figure for phase 1, and $15 million for phase 2.

What will phase 1 close out at?

Mr. BIROS. Mr. Molinari, that question was directed at me. I would like to redirect it to Mr. Bartelt, who may have more direct knowledge of it.

Mr. BARTELT. I will put this between myself and Ms. Kush, since she works at the site on a day-to-day basis.

We don't know what the ultimate accounting for the project is going to be. We have had to the best of my knowledge discussions with the company and are optimistic they will give us a final accounting.

Are we?

Mr. MOLINARI. We are about a month removed from the completion of the job as I understand it. We must have a fairly good approximation at this point in time as to what Chem Waste is going to be paid for?

Mr. BARTELT. I want to reiterate we did not sign with them for a dollar figure. We signed with them for performance. If they do the job, our way, to the satisfaction of Ms. Kush and everyone else involved in overseeing their work, we are satisfied. If it costs them a dollar, if it costs them $100 million.

So, I don't feel guilty, in a sense, that we don't know how much it's costing them on a day-to-day basis, because our agreement with them is for a performance standard. Larry seems to feel—he has conversations with their attorneys relative to access to a final dollar figure.

Mr. MOLINARI. I would appreciate any information you can furnish us.

Mr. KYTE. Anticipating the question, I phoned their attorney last week, Bill Jeffrey. He passed it up the line of officers there. They were not of a mind to want to give it out, did not want to finalize it, they had not done internal audits on the costs yet. They did not feel they would be able to give out reliable figures at this time.

Mr. MOLINARI. Anybody here from Chemical Waste that works for Chemical Waste Management, Inc.?

Mr. BARTELT. Again in the way of an opinion, it would seem to me in their best interests to give us a final figure, in that the Government has gone out and said $15 million. Were I marketing for any cleanup contractor and I was able to beat the Government estimate by a substantial amount of money, rest assured I would make sure everyone knew that.

Mr. MOLINARI. That's one reason I asked the question. The question of what phase 1 is going to cost has a direct relationship to the deal that was made here, that was struck here, and whether it was a good deal or not.

Let's turn to phase 2. Phase 2, we are told, is going to run about $15 million. We are told that is a worst case estimate; is that correct?

Mr. BARTELT. Phase 2 should not run more than $15 million. It is a worst case estimate. The phase 2 or the ground water estimate was based on our best guess as to how much contaminated soil would have to be removed, that a ground water recovery system would have to be installed and operated, and that it would have to be maintained over a certain period of time. Ms. Kush can give you the details of that.

Mr. Molinari. Before you leave Mr. Bartelt, I am confused by your answer. My understanding from reading the testimony and the other documents was that using the term "worst case estimate" means that under the worst set of circumstances it cannot exceed $15 million.

Mr. Bartelt. It should not. I am not going to sit here and tell you in a ground water contamination incident of any nature, even with the most complete remedial investigation and feasibility studies, that I am absolutely and unequivocally certain of the cost.

I can say that, having looked at the estimates, having weighed the information, we have made a reasonable attempt at costing things out.

Mr. Molinari. So what you are saying is that the worst case estimate may not end up being the worst case estimate?

Mr. Bartelt. I would be surprised if it goes over $15 million, but I cannot guarantee you that. It is a worst case estimate.

Mr. Molinari. Who is the one that came up with this figure of $15 million as a worst case estimate?

Mr. Biros. The figure was put together by the technical staff in the Office of Waste Programs Enforcement, and again, as Mr. Bartelt mentioned, region 5 had input including Ms. Kush. Generally, Dennis Devlin put together what amounted to the finalized version of the estimate.

Mr. Molinari. Was NEIC involved in any of this?

Mr. Biros. Only indirectly. The NEIC did an investigation about in 1979 or 1978 or so, which went into, I believe, some remedial response suggestions or recommendations, if my recollection is correct. But, in any event, NEIC used some of the earliest data with respect to groundwater contamination, available.

Mr. Molinari. As I understand NEIC's role, wouldn't it have been normal for you to consult with them as to the testing that would be done to evaluate the subsurface contamination problem?

Mr. Biros. It wasn't necessarily their role in every case. The NEIC is a resource that the Agency uses depending on the availability and other factors. They are not automatically involved in every hazardous waste site.

Mr. Molinari. I understand that. But it would seem in a case of this notoriety to protect your own backside you would want to call them in, and with the expertise and the reputation they have, to ask them to go over with you your own figuring and your own estimates to see whether they have any different opinions or ideas as to what you are doing.

Mr. Biros. Again, Mr. Molinari, the NEIC investigation which was completed in 1978 or 1979 was considered in coming up with this estimate. They were not directly involved in preparing the estimate itself, to the best of my recollection. But Mr. Devlin, who, in fact, prepared it, and the others that were involved in the preparation of the estimate, are all quite competent engineers.

Mr. Molinari. I would like to try to save some time because I know the hour is growing late.

Would you try to briefly describe to me the process the technical staff went through in arriving at this figure of $15 million?

Mr. Biros. If it is OK with you, Mr. Molinari, I will redirect the question to Ms. Kush.

Mr. **Molinari.** I will be happy to receive her response.

Ms. **Kush.** I worked with Dennis on coming up with this estimate. Essentially Dennis and I worked independently to develop estimates and then got back together to discuss it. We had requested from Ecology & Environment, a consulting firm on a long-term field investigation contract to us, in 1980 to develop a rough estimate of cleanup costs for the subsurface. Dennis and I reviewed that document while developing our estimates.

We also reviewed the study that was done on ground water contamination in 1981 and 1982 by Environmental Science & Engineering, which gave some general cleanup costs for different approaches to site remedies.

In addition, Dennis and I both talked with other people in our own groups in the Agency, reviewed cost information from other cleanup actions and from water treatment operations and, based on that, came up with figures that would involve for one thing, removing 5 feet of soil from this site. We felt that would remove what was probably the most contaminated, but also, beyond that depth it would not be very feasible to try to remove the soil based on the particular subsurface conditions at Seymour.

We also included some ground water treatment which would continue for a 20-year period. Included in that were backup treatment and storage capabilities in case the initial system failed.

Mr. **Molinari.** Could I interrupt you for a second, please?

Ms. **Kush.** Sure.

Mr. **Molinari.** Congresswoman Johnson has to leave, and she does have a few questions, and she has been waiting patiently all day. We will get back to you in a moment, if we may.

Mrs. **Johnson.** It is actually specifically along this line.

What has concerned me and what I have been sitting here waiting to ask, I am interested in the process by which you estimated the subsurface cleanup cost. In the process you describe reviewing studies and having people make studies. At any time did your Department review the records that were kept by Seymour to try to determine what had been brought there and how much it might have brought in barrels and how many barrels were on the surface, and subtract that—that kind of thing?

Ms. **Kush.** Yes, we did. At that time, we were in the process of getting all the records from the recycling facility in our offices. The records had been reviewed in 1980 by some of our contractors and, I believe, more recently probably some of our attorneys. I don't know for sure about the attorneys.

Mrs. **Johnson.** So in the process, your contractors do actually review all of the records that a facility has in regard to what they have received, and do they also take into account the date on which they have received it so they have some idea of what barrels have been in the ground and had a period of time to disintegrate?

Ms. **Kush.** I don't know if they did that. That is a very hard thing to consider because oftentimes, barrels were brought there and their contents were either incinerated or reclaimed or something, and other wastes were put into those barrels at a later date. Just because some original barrels were there doesn't mean the original contents were there; whereas the original contents may be there but the barrels may have been long gone themselves and the contents put into something else. So to use dates on which barrels were received would only be speculative on anyone's part.

Mrs. JOHNSON. In view of the difficulty of making these estimates, did you consider requiring, as part of the 50-percent surface cleanup cost, that while there was 1 foot of earth removed from the surface, that at that time there be some tests at 1 foot, 2 feet, at 3 feet, at 4 feet, 5 feet, right down to the underground?

Ms. KUSH. We didn't include that as part of the surface cleanup, but we included it as a phase in the subsurface investigation.

Mrs. JOHNSON. Why would you wait until the second phase for that? It seems to me the information is relatively scant to achieve your goals even in the first phase.

Ms. KUSH. The techniques that we use to look for buried materials on a site are not usable with all the metal drums or any metal on the site.

Mrs. JOHNSON. I appreciate that. But presumably you don't remove the foot of dirt until you have the metal drums and stuff off the top.

What I am curious about is the process. Once you get the metal drums and the surface debris cleared, once you take that foot of stuff off, wouldn't that be an ideal time to do some of the tests that might give you a better indication of what you are going to be up against in the future?

Ms. KUSH. That is what we will do, but that is not necessarily considered as surface cleanup.

Mrs. JOHNSON. I appreciate that is not within the definition. But would it have been within the power of the negotiators to include it within the definitions and ascribe those costs, since the State didn't have any money and the Federal Government didn't have much money, and include those costs as part of the 50 percent in the first round, strengthening your hand to proceed in the second round? At least you would know what urgency there was and have a handle on the problem.

Now, in a few months hopefully the site is going to be laid over with nice green grass or something; I am not sure what. But it seems to me that it would have been a logical part of the first phase action.

Mr. LEVITAS. I might add at that point, Mrs. Johnson, that we can include that as another suggestion to Mr. Ramsey as to how that may have improved the settlement negotiations.

Mrs. JOHNSON. Right.

Mr. BARTELT. We would prefer to—as Gene has said earlier, and I think as I have said—we would like to have all the data up front as part of the first phase. We did not have that data. We had under 311 collected a significant amount of ground water data. Unfortunately, we had not been able to grid the site, which is the technical term that I would relate to what you are saying, whereby you go over the clean site, drill into the soil at various depths and determine once and for all absolutely how much soil needs to be removed.

Instead, we made an educated estimate that said the worst case would be to take so much soil, which is what we projected and is what the study you are alluding to would call for. We needed an estimate. We needed a worst case estimate, and we prepared that on the basis of the available information which was a reasonably detailed ground water study.

Mrs. JOHNSON. I think my point is that what you are talking about, what you have been talking about here is estimates. And I appreciate the complexity of the problems and therefore the complexity of making those estimates.

What I really am saying is that it seems to be logical and important that we include in agreements of this nature in the future the requirement that the test be made while that foot of soil is off, and that there be perhaps some escape clause so that you will not be totally precluded. I realize the difficulty of negotiating with people who want total relief if they make certain gestures, and so the escape clause might not be possible. But it does seem to me that that is a time, and not to have done it, not to have negotiated it in, delays the development of information that is extremely important to the next step. And it may turn out to be that the next step is almost more important than the first step in the sense that the contamination is closer to underground flow.

Mr. LUCERO. Mrs. Johnson, I would like to respond to that.

As a matter of what we should attempt to do in the future, I agree with you that we should attempt to do just that. How successful it will be will be a matter of give and take in the negotiations. But it is a very good suggestion. It is not one that came, I think, to the minds of the folks when we were negotiating.

Mrs. JOHNSON. May I ask one last question, and then I do have to go, and I am looking really for a fairly brief answer.

In your opinion, Mr. Lucero, and your opinion, Mr. Ramsey, do you think that the apparent conflict between the Justice Department and EPA over the issue—and I should really include Mr. Brown in this question—over the issue of litigation versus negotiation appreciably slowed action in the case of Seymour or other cleanup projects? It is my distinct impression from hearings in January and February, or February and March—I don't quite remember which—that that was indeed the case.

Mr. BROWN. At the time of the Seymour situation, there was a distinct policy for nonconfrontation and negotiation rather than litigation. So in my opinion, that would definitely slow litigation.

Mrs. JOHNSON. And did it slow progress on resolving the problem?

Mr. BROWN. Well, at this particular site, I don't think that litigation was a viable alternative because litigation would mean a solution 2 or 3 years down the line. The technical information I had created a sense of urgency that was not a solution 2 or 3 years down the line. It was not an appropriate solution to wait 2 or 3 days down the line.

Mrs. JOHNSON. But you think that the sense of confrontation between the two Departments did delay the solution even though litigation would not have been an appropriate solution in this instance?

Mr. BROWN. I don't think there would have been so much confrontation. I just think EPA had a talk-type policy. I don't know that there was a confrontation. Justice has a hard time filing a suit if EPA doesn't refer it to it.

Mr. RAMSEY. Mr. Brown is correct. The Department is not thought to have generally independent authority to bring these actions absent a referral from the Agency.

I would say that in my own view there was—and there existed for a period of time, about a year and a half, I suppose—some difference of view as to usefulness of litigation as a mode to obtain settlements in these cases. I don't think that that difference of opinion slowed down the cleanup here or achieving an agreement.

I think it is a finer shade of gray than that. I think that what it affected was the risk the Government was willing to take, how far we were willing to push, and what risks we were willing to take in losing an agreement altogether by saying this is our bottom line and we won't go below that, as opposed to drawing a bottom line someplace else that is perhaps more generous to defendants. That, I don't think, slowed things down.

Mrs. JOHNSON. In your opinion, Mr. Lucero, did that difference of opinion inhibit progress toward a solution?

Mr. LUCERO. Generally, I don't believe so. I think, if anything, it is just mostly a difficult set of discussions that we have. But I think within the time pressures that we have in a given case, we came up with an agreement or, in some cases, a disagreement. I don't have a general sense that it slowed down things.

Mrs. JOHNSON. Thank you. Thank you very much.

Mr. Goodloe, same question.

Mr. GOODLOE. That is not easy for me to answer without saying some other things first. I don't know how much time you have.

Mrs. JOHNSON. I will listen.

Mr. GOODLOE. Earlier in the afternoon, you heard some testimony to the effect that the case had languished for a couple of years without action. That is a characterization that I don't necessarily share. This case had been on file for quite some time, but it wasn't necessarily languishing without action.

In 1981, we began what we called the informational meetings with these companies just to open up lines of communication to find out who the representatives of certain of the larger contributors of waste to the site were. We did that, and that continued from about roughly the last week of March 1981 on through the end of 1981.

The meetings with an organized group of companies didn't actually occur, though, for the first time, until October 23, I think it is, 1981. At that time, we had a meeting at Indianapolis in the U.S. attorney's office with a group of companies represented primarily by the prime movers that were eventually in the group of 24 that settled, IBM, Cummins, and so forth.

The talk all along during 1981 in these informational meetings was to the effect that we would present to the companies a cost estimate as soon as we had one, and at that time we would make a demand on them. So the companies had no real pressure on them, at least through 1981, to come in with a settlement, because they were waiting for us to give them the costs.

Then, in the spring of 1982, we finally got some of the scientific data completed, and that was furnished to the companies probably in about February 1982. At that time we were already in the process of meeting with these companies in an organized fashion, and that didn't break down until June 1982.

With that little historical perspective, I guess our answer would be, if I understand the question correctly, we did not necessarily have—that is, the U.S. attorney's office—any squabbles or disagreements other than just normal bureaucratic problems with EPA or with main Justice. The bureaucracy being what it is, it just takes a while for some of these things to move and, in some cases, just meander their way through the process.

Take for example, the pro rata settlement offer. That is something that actually began, as I indicated earlier in my testimony this afternoon, in the talking stage among the lawyers as far back as the fall of 1981. It was about June 1982 before we actually had a cost estimate which we put together that we could go forward with.

Now, that is not necessarily something I would attribute to squabbling between the agencies so much as just the process being a lengthy one, because you have so many bureaucracies involved and so many different people. We had six lawyers involved, and I don't know how many technical people. There were three lawyers in Justice and three for EPA. Plus we had EPA's engineers and other scientific people. And it just took a while.

Mrs. JOHNSON. Thank you very much.

Ms. Walker.

Ms. WALKER. I wanted to ask, Congresswoman Johnson, if part of your question went to the commitment of the Department to litigating EPA's cases? If so, I would like to address myself to that.

Mrs. JOHNSON. Yes.

Ms. WALKER. I would like to say, first, with the Agency's commitment to do remedial investigations at this site, that we will have more information in the future up front with which to proceed in settlement negotiations on behalf of the Agency.

But I would also like to mention something I did not say in my opening statement that I think is appropriate to add here. I currently have 45 lawyers in the environmental enforcement section, and support staff in addition to that, totaling about 85, both attorneys and support staff. I will be adding both permanent and Superfund positions between now and 1985 such that by 1985 the environmental enforcement section, both attorneys and support staff, would be at approximately 146.

We are committed to bringing actions on behalf of the Agency. I have personally visited all of the regions of EPA to indicate to their enforcement people that I will, the section will, and the Department will provide the resources to the Agency to bring these actions. And as I indicated in my opening statement, I believe the statistics of the Department have indicated that we are bringing actions on behalf of EPA. We are committed to trying them. We have some in trial; and while we are always hopeful that we will have settlement negotiations that will produce good results early on to clean up these sites, we are prepared to litigate them and have committed the resources to do so.

Mrs. JOHNSON. Thank you very much.

Thank you, Mr. Chairman.

Mr. LEVITAS. Thank you, Mrs. Johnson. And I appreciate the questions that you asked. And in addition to the point that you made, I think it is very important that this cost estimate which underlies the whole factual basis of the settlement is one that needs to be explored, because I get the feeling that even given the competency of the two individuals primarily involved, we are still talking about essentially numbers pulled out of the air, and that is one of the problems.

Thank you very much.

Mr. **Molinari**. Getting back to the question of the estimate of subsurface cleanup, I understand now, Ms. Kush, that you worked with Dennis Devlin in coming up with the figures.

Ms. **Kush**. That is correct.

Mr. **Molinari**. I have a draft memo that is entitled, "Subject: Estimated Cost for Total Cleanup of Seymour Recycling Sites," and it is from Lamar Miller to Steve Ramsey. And it has a breakdown of figures on page 3 which shows under phase III a total cost figure of $15,630,000 for the remedial action for soil and ground water.

Now, does this figure represent computations that you made together with Mr. Devlin? Does it represent that?

Ms. **Kush**. Yes; it does.

Mr. **Molinari**. If, in fact, this occurred at region 2, who would be making the estimate as to subsurface cleanup?

Ms. **Kush**. I don't know. Maybe Mr. Lucero or Mr. Biros can answer that.

Mr. **Molinari**. I will take the answer from any qualified person.

Mr. **Lucero**. I am not sure I can provide the answer, sir. It would have been any person with the type of qualifications that Ms. Kush had or Mr. Devlin. And while I can't say that anybody leaps to mind at the moment, there are a number of qualified people in region 2 that could perform this kind of assessment.

Do you want to know who the final decisionmaker was?

Mr. **Molinari**. Let me just tell you what comes to my mind. We have 10 regions. I would assume that we have people of varying degrees of competence from different regions.

Are they all the same level of competence?

[The following was received from Mr. Lucero:]

COST ESTIMATE FOR SUBSURFACE CLEANUP

Under the direction of Gene A. Lucero, Director of the Office of Waste Programs Enforcement, cost estimates were developed for surface and subsurface cleanup at the Seymour Recycling site. These cost estimates were developed by: Dennis Devlin, Environmental Engineer, Office of Waste programs Enforcement; and Beverly Kush, On-Scene Coordinator, Remedial Response Branch Region V.

Mr. **Brown**. All the brothers are valiant and all the sisters are virtuous, Mr. Congressman.

Mr. **Molinari**. I expected an answer like that, Mr. Brown.

The question I have is that we are dealing with a problem that EPA is faced with in each and every case estimating cleanup costs, and the one that is obviously more difficult is the subsurface cleanup cost. And I am trying to determine what procedures are normally followed as a matter of policy by EPA in coming up with these estimates.

In this particular case, Ms. Kush worked with Dennis Devlin in coming up with that figure. We are told that it was a worst case analysis. And from the readings that I have, in no way could it go beyond that figure, because they left so much of a cushion. Yet, today we are hearing that nobody is willing to put themselves on the line and say it is going to go conceivably higher than that, or that in no way will it go higher than that. And I don't mean to be facetious when I say that, Mr. Bartelt.

It shocks me that we don't have a more defined structure within EPA to come up with a more definitive cost analysis, at least from a ball park figure, when you talk about worst case estimates. So that when somebody comes before a subcommittee and says no way will this cleanup cost exceed $15 million, because we have allowed so much leverage in there that no matter what, we are safe—now I am getting to the chairman's question because before we had a conversation with Mr. Ramsey and Mr. Brown—it was just an informal conversation—and I said, as I said before on the record, that this may be a very good deal because it had the appearance to me of one where facing great difficulties, after it is all over, taxpayers may not be forced to pay 1 cent, and the State of Indiana may not be forced to pay 1 cent. And, indeed, that may still be the case.

But I was basing my own feeling on what I thought was an expert opinion, and I am hearing something that sounds a little different to me today.

Go ahead, Mr. Lucero.

Mr. LUCERO. Again I can't really comment from personal knowledge as to how the assessments were made. Let me tell you what has changed in the Agency since then that I think your question is directed at.

First of all, the Agency, particularly the Superfund Program, which is managed by Mr. Hedeman, has identified that as a weakness, as a weakness that has ramifications more than just on settlement discussions. I can go into those, if you wish. But as a result, there are two sets of guidances that are in the process of being developed. One is further along than the other.

The first is called feasibility study guidance. That is actually drafted and being circulated for comment within and without the Agency. That would essentially tell people how to conduct this type of assessment, whereas with the type of qualifications Ms. Kush has, as I am aware Mr. Devlin had, I think they probably followed that process intuitively. It has now been reduced to writing. There is a document, if you wish, that you could review.

In addition, the Agency is developing remedial investigations guidance. That guidance is not quite as far along. That has been tasked. The expectation is it will be available, with luck, in either late February or early March for the first review, comment and revision. Hopefully, a final document will be ready by the end of June or so.

There is both the Agency internally, either through its own staff, be it enforcement or Superfund, its contractors, regardless of who tasks them, and any other experts that Agency may use, as well as responsible parties and consultants that they may use, will do these assessments, either remedial investigations or the feasibility study in the same way considering all the information.

So I agree with you, that is a problem. Again the Agency has been trying to catch up with all the problems we have to fix. That is one we are working on fairly aggressively.

In the interim, while that guidance is missing, the way we deal with the quality control essentially on assessments that are made is there is a double review now whether it is an enforcement settlement or a Superfund cleanup. My technical people here and the technical people in the region—this varies from region to region—while essentially if they are on the enforcement side, look at—I can't speak for the others—my technical people will look at the proposed decisions and their record of decision for a Superfund cleanup to make sure it is consistent with and done in accordance with the concerns that we have.

The Superfund people and the Office of Solid Wastes, which deals with RCRA and the technical studies under RCRA, will also review the proposed enforcement, from a technical perspective.

What we are doing, at least within the Office of Solid Waste and Emergency Response is that everybody reviews the other decisions so that we get the best judgment. If there were a region—I assume regions do the same thing—I have retracted my statement because I am really not quite sure. Essentially that is what we are doing in lieu of this guidance. We will continue to do that in order that we don't make a serious technical mistake, identify an inconsistency.

I think we have identified that as a problem, not just from this case, but from a lot of different places where we tried to get a handle on it.

Mr. **Molinari**. Mr. Bartelt.

Mr. **Bartelt**. I would like to add to that and say I feel that I am the one that is responsible or technically responsible for the estimate. I feel we have already gone out and stood by that estimate. I wouldn't give you an absolute guarantee of a number for ground water cleanup any more than your building contractor will give you an absolute guarantee on your house. That is the point I was trying to make.

Mr. **Molinari**. I wouldn't build a house with a builder unless I had such a guarantee.

Mr. **Bartelt**. In any construction project, the builder has an option for change orders, for changed conditions—weather, whatever it is. I am familiar with very few construction projects that come in with an ironclad guarantee of a ceiling figure.

Mr. **Molinari**. I have been practicing real estate law for 30 years. I have signed many, many contracts representing builders and buyers. I know there is a practice in some States where the builder leaves an out, but I have never been involved in one yet. I don't want to get into anything personal.

Mr. **Bartelt**. What I want to say is following what Mr. Lucero said, at this time we do go through a detailed estimating process, trying as best we can to accommodate the guidance that is in draft form. Our people will prepare a detailed technical report that is the basis of the record of decision. That is then approved at the regional level by the regional administrator, and forwarded on to headquarters. So it is a much more formal and regimented process than what was accommodated.

Mr. **Molinari**. Mr. Kyte.

Mr. **Kyte**. I would like to make a point on this. I think we are really talking about the level of detail of the technical data that we have in making our decisions. Probably any engineer could tell you after a feasibility study is done, and they give you a cost estimate with a lot more technical information, don't bet your life on that either. In fact, probably a lot of cost overruns on projects that the agency itself undertakes will reflect that there is a lot of uncertainties in this type of area. There is a question, a ball park figure. With the information we had available, it was a risk that we had to consider.

Mr. MOLINARI. Is there a detailed analysis, a breakdown of how this figure $15,630,000 was arrived at? I have A to F here on this page which shows different categories, but is there something more specific, more detailed than what I am looking at?

Mr. BIROS. Mr. Molinari, Mr. Devlin prepared a somewhat more detailed analysis. If the subcommittee staff does not have that, we can provide you with it. It is a handwritten, two-page analysis.

Mr. MOLINARI. I am advised that they have the two-page analysis. Is that all there is?

Mr. BIROS. Yes sir. Plus the backup reports. There are four studies used or evaluated in preparation of this estimate.

Mr. MOLINARI. I would like to make a request that you provide the subcommittee with copies of the backup reports you are referring to. We apparently have the two-page workup, but not the backup reports.

Mr. BIROS. They included the NEIC study and the E&C study Ms. Kush mentioned. We will provide you with copies of all four.

Mr. MOLINARI. One last time. As a matter of course, you do not consult NEIC. It so happens in this case you had an NEIC study made in 1979 or 1980, but that is not a policy you would pursue in each and every case?

Mr. LUCERO. The National Enforcement Investigation Center provides resources. Mr. Gallagher and I have an agreement that we will discuss who is going to apply which resources where. Sometimes it is my technical people, if the region needs additional support. Sometimes it is his technical people. You are correct in your statement. It is not a matter of policy, but if it were a matter of policy, they wouldn't have enough resources nor would anybody else.

Mr. MOLINARI. The reason I asked that—let me explain. The city of New York is about to undertake a project where there was a considerable amount of toxic dumping, and I have very deep concerns as to what was going to happen to the residents of the area. They prepared a study as to the work they were going to undertake. They asked me, because they knew of my concern, if I would send it to NEIC to get an evaluation of it, which they did. They came back with a very favorable report.

Now, looking back, I am wondering whether instead of sending it out to NEIC, maybe I should have sent it to EPA headquarters. Maybe somebody different would have—some of the other divisions would have made another analysis for me. Is that what you are saying?

Mr. LUCERO. It is very possible. There are centers of expertise in the Agency in different locations. NEIC is one. My office is one. Depending upon the particular needs, we go to other parts of the Agency as well.

Mr. MOLINARI. Ms. Kush, I want to go over a question of the onsite monitoring. Were you there from the beginning of the cleanup operation?

Ms. KUSH. I was there on a 1-day- or 2-day-a-week basis generally from the beginning, and in addition, we had some of our contract or assistants there 3 days a week initially and beginning in March, we had them there fulltime, that is when chemical waste was working. There were also representatives from the Indiana State Board of Health that would come out occasionally and oversee the cleanup.

Mr. MOLINARI. You have been doing this work, according to the affidavit I see, since January 1981?

Ms. KUSH. Correct.

Mr. MOLINARI. What kind of training did you receive prior to receiving the assignment?

Ms. KUSH. I have been to several training courses within the agency, directed specifically to hazardous wastesite investigations, related to safety, site monitoring. I have had seminars on cleanup, keeping track of costs of cleanups and overseeing activities. This is in addition to previous experience and educational background that I have.

Mr. MOLINARI. One of the agreements that was reached here was that there was going to be air monitoring. This was one of the addons not in the original agreement but in the final agreement that was negotiated and incorporated into that exhibit B. Do you supervise the air monitoring that is taking place there?

Ms. KUSH. I don't actually supervise it. We get reports from the person in charge of the air monitoring on a daily basis.

Mr. MOLINARI. Who is that person?

Ms. KUSH. His name is Dale Bowman and he works for the trustees. We get daily reports from him to know the air monitoring has been done and what types of contamination or vapor levels they found at the site.

Mr. MOLINARI. Is there any independent verification of the monitoring techniques so that we are sure that the right type of monitoring is taking place?

Ms. KUSH. We routinely go on site—myself, or our EPA contractor supervising the cleanup—and using our own instruments, do monitoring on-and off-site.

Mr. MOLINARI. Have you found any variances with the tests you run yourself and those furnished to you by the trustees or the person employed by the trustees?

Ms. KUSH. No, we haven't. These are instruments that record actual time data. It is not an actual laboratory test. So that depending upon wind or weather conditions, such as moisture, if you are downwind, you may get one reading and 5 minutes later get another reading if the wind picks up. We haven't seen any variances, though.

Mr. MOLINARI. What is his name?

Ms. KUSH. Mr. Bowman.

Mr. MOLINARI. Bowman?

Ms. KUSH. Yes.

Mr. MOLINARI. Do you know what his profession is?

Ms. KUSH. No, I don't know. He is employed by an engineering firm which was hired by the trustees to oversee the cleanup. They worked in conjunction with a company called ERT—Environment Research & Technology—out of Boston who set up the air monitoring program. In addition, ERT employees have come out to the site at various times during the cleanup to work with Mr. Bowman.

Mr. MOLINARI. Does doing this kind of work require a degree of proficiency, training, et cetera?

Ms. KUSH. The initial work involving specific compound monitoring at the site was all done by the ERT employees. Mr. Bowman has been trained by them and has performed monitoring using what is called an organic vapor analyzer. This would require some training, yes, which he received from the ERT employees.

Mr. MOLINARI. We don't know in fact he had that training, do we? You don't know, do you?

Ms. KUSH. I know it from talking to them. I was not present when he had it.

Mr. MOLINARI. OK. What is your opinion as to the work performance of Chemical Waste Management, the work they have performed to date?

Ms. KUSH. I think in general the cleanup has gone quite well. We have been there to oversee it to assure that they are conducting the cleanup as specified in the cleanup plan.

Mr. MOLINARI. Tell me about the part that is not general, where it has not been good? What other portions have you had problems with?

Ms. KUSH. I think you are familiar with the original problems we had where Chemical Waste were using the facility for disposal which was not specifically——

Mr. MOLINARI. Let me interrupt. I am somewhat familiar with this and we want to get this into the record. That is the reason I am asking you the question.

Ms. KUSH. Early in the cleanup, Chemical Waste Management used a disposal facility, or actually two disposal facilities which were not specifically listed in the consent decree. I found out about this through a discussion with one of their employees onsite, their project manager, just by asking him where some trucks that had gone out earlier that day, January 17, had gone. I was told by the project manager that the trucks went to Evergreen landfill. At that time, I told him that the site was not in the consent decree list. He indicated to me that they had a legal opinion from their attorneys that Evergreen was acceptable because the list in the cleanup plan was not an exclusive list but only an exemplary list.

Mr. MOLINARI. You mean to tell me they didn't clear these sites with the EPA ahead of time, but instead got an opinion from their attorney, and because their attorney said it was OK, they merely went ahead and started to dump at these two sites that had not been incorporated into the court decree?

Ms. KUSH. That is correct. That is my understanding, yes. They did not clear it ahead of time.

Mr. MOLINARI. If you hadn't talked to the employee that gave you the information, I assume that they would have continued on their merry way and continued to dump at sites not agreed to in the consent decree? Is that a fair assumption?

Ms. KUSH. It is an assumption. I don't know. We did routinely, at the end of each month, get copies of manifests which would indicate what facility the wastes went to.

Mr. MOLINARI. You would accept their manifests as gospel, I assume?

Ms. KUSH. The manifests would indicate waste went to the facility not on the list. At that time we would have caught it. However, we caught it before the end of the month. We caught it approximately a week after they did this.

Mr. MOLINARI. Suppose they lied in the manifests as to where they were disposing. This is a very common occurrence in this field.

Ms. KUSH. It is my understanding the manifest system was put in to use to try to stop those types of problems.

Mr. MOLINARI. Yes. It works when everything that is in the manifest is true and accurate reporting. My own humble experience—I have seen so much abuse it is unbelievable. At no time did EPA or did yourself as the onsite monitor follow the trucks to see where they were going?

Ms. KUSH. No sir, we didn't follow them outside of Seymour.

Mr. MOLINARI. Then there came the day when there was an accident when the trailer truck hit the bridge. At that point in time you found out that the truck was some distance removed from the permissible sites and at that point in time you found out that they were bringing these crushed barrels in a trailer to a nonpermitted site or nonagreed site?

Ms. KUSH. At that point we already knew they had used the facility. I cautioned them they needed to discuss this with their attorney and have him arrange to either get the site on the consent decree list of sites.

Mr. MOLINARI. What do you mean at that time? Do you mean before that time?

Ms. KUSH. Yes. We had found out.

Mr. MOLINARI. Despite the fact you gave them that warning, it went unheeded and they continued to dump at the sight that had not been cleared?

Ms. KUSH. I don't know if their project manager discussed it with their attorney at that point or not.

Mr. MOLINARI. Mr. Chairman, the hour is getting late. I am not going to pursue this any longer except to make an observation that from what I have heard. I am certainly far from satisfied that adequate, with a small "a", monitoring in fact occurred on this site.

Mr. Lucero, I would ask that we be given a detailed report on the monitoring efforts that occurred since the cleanup started.

I would like to ask a question not related to Seymour, but something that has been reported in the papers this week. That story was about failure to prosecute within the prescribed time, that the Government has lost its right to sue and recover from a number of responsible parties throughout the country. Apparently the filing deadline was December 11.

Now, newspaper reports indicate that there is a difference of opinion as to who was responsible. The Justice Department has been blaming EPA, according to the report I have read in the paper. EPA has said it is the fault of the Justice Department.

Let me start off by asking Justice what you know about it and whether any notice was sent by Justice to EPA telling them of the impending crisis and they better move their butt before they lose their right to pursue the claims or whether the reporting that we have read is totally inaccurate?

Ms. **Walker**. Congressman Molinari, if I may, I will begin. Mr. Ramsey will follow me with perhaps more specific information. I am not aware of any blame being affixed onto EPA by Justice, although I, like you, have read the newspaper articles and understand what they have purported to be the case.

As you know, the statute authorizes natural resource damage claims to be brought under section 107(f), and the national contingency plan in July 1982, I believe it was, did provide for more specific reference to the trustee agencies who would be bringing those actions.

We have had ongoing conversations with our client agencies including NOAA, the Department of the Interior, and EPA, as to natural resource damage claims which, of course, have been an issue in cases and will continue to be an issue.

We are aware of the statute of limitations, of course, that is contained in the act, and we are also aware that there will be actions brought in the future based on the fact that that statute, in some cases, will not have run because the natural resource damage will not have been discovered.

Mr. **Molinari**. May I interrupt you a second?

Ms. **Walker**. Yes.

Mr. **Molinari**. Are there other cases where we will have lost the right to recover because of failure to file?

Ms. **Walker**. I am not aware personally of any. There may be some where there was knowledge—I am just not aware of any at the moment. We have, as I indicated, brought cases and expect to be continuing to bring cases. I would like to say that we have participated through the national response team on which I am a member and Mr. Ramsey is my alternate. We have briefed the members of that team on the statute and our willingness to bring suits on behalf of the agencies, again in 1982 if not before that they had constructive notice of their obligations. I know many of them are looking at this.

Mr. **Molinari**. Let me ask you this. What followup took place within your Department to see whether the various agencies were proceeding to protect the Government's right?

Ms. **Walker**. As I indicated, we have had ongoing discussions with several of the agencies, and where they have been able to identify claims, we have worked with them to perfect those claims and have brought them.

Mr. **Molinari**. When you say ongoing discussions, I take it you are talking about verbal discussions.

Ms. **Walker**. I am aware of verbal discussions between members of the staff of the environmental enforcement section, including Assistant Chiefs that are underneath Mr. Ramsey and perhaps Mr. Ramsey. I don't know. Steve can speak for himself in this. We have had ongoing discussions with them to develop any claims they are aware of and to bring these actions on their behalf.

As indicated earlier today, we bring action that are referred to us. I will say one thing that we have said before and perhaps will give some comfort. As you know, the definition of natural resource damage as contained in the statute is quite broad. It clearly overlaps with any costs we would recover for cleanup of a site.

For example, soil decontamination is clearly a cost that we have recovered in many of our cases including, for example, Seymour, which is also something that could arguably be clearly a natural resource damage because it is damage to soil, restoration of which would obviously involve decontamination. Much if not all of the natural resource damages on some of these sites will be recovered in terms of response costs compelling cleanup on the part of responsible parties.

To the extent there may be claims which were foreclosed, I could only speculate. I am not aware of any.

With that, if I may, I would like to turn it over to Mr. Ramsey.

Mr. MOLINARI. Sure.

Mr. RAMSEY. Congressman Molinari, I don't have a lot to add except to say that the natural resource damage trustees, who are those designated by the Executive order appointing them trustees—the Department of Defense, the Department of the Interior, the Department of Commerce, and I believe the Department of Agriculture—is that correct, EPA is not a natural resources damage trustee.

I am sorry, what? The States. Yes. The States have their own rights and responsibilities as natural resources damages trustees.

If your question is did the Department send a massive mailing or undertake an informational campaign to alert these folks that they must do something, I think the answer is that we did not. If the issue is did the natural resource damage trustees know what their obligations and responsibilities were in that they had to bring the claims within a certain period of time, my belief is from my attendance at meetings of natural response teams in terms of what is going on at the Interior Department and the fact we got referrals from the Army, the Navy, and the Department of Commerce, that they knew and understood their responsibilities.

If they didn't, those questions really, I suppose, should be addressed best to those agencies.

With respect to finger-pointing, I guess we are talking about the article in—I don't know whether it was the Post, or the Times, or both. All those folks have long since gone home or we could ask them. I don't think the Department blames the Agency, and I really have not felt the Agency blames the Department. Wherever that has come in, I haven't felt that.

I would also say one other thing. There is a discovery rule for the claims. So it may be that where some of the claims may have predated the statute, some of the agencies have not discovered them yet. To the extent they haven't, certainly those claims would be kept alive. I am not aware, one way or the other, whether any sort of attempt, a focused, organized attempt, has been made to identify within those agencies natural resources damages on various parcels of land or what have you.

To figure out which ones they should bring or not, I just don't know what has gone on there.

Mr. MOLINARI. I would like to make one final comment. I can understand you can't sit there and play a guessing game as to the number of claims throughout the country. But you are not dealing with that many agencies. I must say I would be surprised, and I am surprised to learn there were not any written communications sent to you, we can see by even the testimony that occurred here today that the recollection of people sometimes isn't the same as others. So as a lawyer, you and I normally, to protect ourselves, would have sent them a notice saying, remember, December 11 is the final date; if you have any pending that fall into that category, you are duly advised to file in time, or else.

Apparently that didn't occur in this case. They relied on oral statements that were made between yourself and the affected agencies.

Mr. RAMSEY. I believe that's correct; yes, sir.

Mr. MOLINARI. I have no further questions, Mr. Chairman.

Mr. LEVITAS. Thank you, Mr. Molinari.

Mr. Lucero, and Mr. Ramsey, why did the small generators think that the IBM Topol group might have been lying to them or stringing them along?

Mr. RAMSEY. My understanding is that they felt or some of them felt—and this again I guess is a question best directed to them—but my understanding of that issue is that they felt that some or all of the group of 24 had in their minds, all the time, making their own proposal: At a time when they knew, they were serving in some sort of if not fiduciary, at least advisory relationship to the rest of the roughly associated companies. There is a letter, the date of which I have forgotten and the author of which I have forgotten, but my recollection is it is from one of the inhouse counsel at GM to the rest of the group that is sort of a bone of contention amongst all that crowd. In essence, I think they feel that people, some of the people, were wearing two hats and that put them in some sort of conflict with respect to their obligations.

If I may just say, this whole area of organization of responsible parties and their relations, real or legal or assumed, to each other is a very difficult area and one in which the Government, I think, has found from all our experiences, has led, and I think the testimony would be, did lead to what I referred to as the lowest common denominator factor in some of these settlement proposals. That's what happened with the large Bayh group. You had so many people you have to deal with. You have to try to satisfy everyone. The most you can come up with is a proposal clearly unacceptable to the Government. That's an aside as to what has happened here and happened in other cases as well.

Mr. LEVITAS. Mr. Lucero, do you want to comment on that?

Mr. LUCERO. I don't believe I could add much to that. That's basically my understanding as well.

Mr. LEVITAS. Mr. Biros, in your notes that we have referred to earlier on October 1, 1982, and again on October 12, 1982, you make reference to this problem. In the first instance a small generator group is unhappy, thinking of writing to an Administrator, I guess it's an abbreviation for that, and there is another words that seems to be misspelled and I assume it's "breached fiduciary duty of Topol group. They have been lied to. Topol group getting out for 50 cents on the dollar. Doesn't like divide and conquer approach."

On the 12th, this statement, "Small generators AFF misled by larger members, excluded from the group."

Do you have any idea where those ideas came from? And what do they mean to you?

Mr. **Biros**. Well, they basically expressed the concerns that were raised at the discussions at which the notes were taken concerning the small generators' complaints that they had been left out of the Topol group and had not been given an opportunity to participate, and they are concerned that they may, in fact, not be able to settle with the Government. But generally the concerns as Mr. Ramsey expressed are those that I understood were the concern of the small generators, not part of the IBM group.

Mr. Lucero, I think you have now got the information we asked for earlier about the amounts and percentages that the nonsettling generators who have now been sued will be coming up with. Would you like to submit that for the record at this point?

Mr. **Lucero**. Yes, sir, I would. Based on the statement just made, I'd like to clarify what this represents. This represents, as we understood your request, what amounts both in dollars and percentagewise what these companies, the ones that were sued would have been offered an opportunity to settle for in the pro rata proposal, and what is listed here ties percentage amount by company and the dollar amount.

The total percentage and this was done over the telephone, so it's supposed to come out to 23.7 percent, but somebody can't find 0.2 or 0.4 percent, and so they have a range of between 23.3 and 23.9 percent of the total. We will try to refine those, but I'll submit what we have based on our findings.

Mr. **Levitas**. And what is the total dollar amount?

Mr. **Lucero**. The total dollar amount for the 50 companies that were sued is $7,110,557.42.

Mr. **Levitas**. Now, does that list of new defendants encompass all of the generators subject to the cash out except those who were part of the IBM group or the pro rata settlers?

Mr. **Lucero**. Can I make sure I understand your question? I didn't get all of that.

Mr. **Levitas**. My question is this group of 50 plus the IBM group plus the pro rata settlers, does that constitute all of those who would have been eligible to participate in the pro rata settlement?

Mr. **Lucero**. No, sir, because there was an identified list of 368, and if you add up the numbers they don't come to 368. There are a number of parties, in other words, who are not being sued that could have participated on the pro rata side.

Mr. **Levitas**. I notice Johns Manville Co. is listed on that list. I thought they were in bankruptcy?

Mr. **Ramsey**. They are in reorganization. We have another lawsuit against them up in New Hampshire. I think that they fit—the litigation folks have asked me not to talk very much about why we selected various ones—but they fit the general outline, which I think relates to volume and materials of a toxic nature on the site. So we went ahead and sued Manville. If that proves to be a problem, the Government has the right to dismiss them without prejudice or pursue the claim in bankruptcy court.

Mr. LEVITAS. Mr. Bartelt, August 5, 1982, you have a memorandum which, without objection, we will make a part of the record, together with its undated draft issue papers attached thereto.

[Information received from Mr. Bartelt follows:]

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

DATE: AUG 5 1982

SUBJECT: Seymour Recycling Corporation State Request for Expedited Clean-Up Activities

FROM: Richard E. Bartelt
Region V Superfund Coordinator

TO: Rita M. Lavelle
Assistant Administrator
Office of Solid Waste and Emergency Response

Attached are two briefing papers regarding the Seymour Recycling Corporation site in Seymour, Indiana. I am forwarding these as a follow up to your discussions with Val Adamkus on August 3, 1982. The first is a draft which relates to the State's recent request for expedited clean-up action, the second relates to the general situation of the project as it now exists.

The material regarding the State's recent request is brief due to the evolving situation. I can summarize the situation by stating that it is doubtful that construction can be initiated prior to November, 1982 but that we may be able to have the procurement process underway by that time. A new effort to expedite activities at the site could pose a threat to promising negotiations and possible settlements with various groups of generators. The issue of moving ahead before the State actually has money in hand is also a difficult matter due to its precedent setting nature.

As you know the Seymour site has moved slowly due to a lack of State funding for its share of at least 50%. Removal of any materials from the site would be excellent from a community relations standpoint and would serve to reduce the substantial threat to the environment posed by the site. I will be meeting with Bill Hedeman and Gene Lucero, August 10, 1981 and Seymour will be a topic of discussion. Please share this material with Bill and Gene as I have discussed the situation with their staffs. I hope this information is adequate supplement to your discussion with Mr. Adamkus. If you or your staff have questions please let me know.

i.e. by mes
R. L. talking
To Adamkus?

Superfund
Indiana
Region V
Richard Bartelt
(312) 353-9773

DRAFT

Briefing: SEYMOUR, INDIANA
State Request for Expedited Cleanup

ISSUE: The State of Indiana is anxious to have materials removed from the Seymour Recycling Corporation facility in Seymour, Indiana. Can removal of some materials be accomplished in the near future say by October, 1982? What impact if any would such expedited activity have on ongoing negotiations with generators?

BACKGROUND: Attached is a current general briefing on the Seymour project which is forwarded as general information.

Recently (Friday, July 30) the governors office advised the Region that the State is very anxious to move materials off the Seymour site as soon as possible. It had been proposed that a State match of $1 million would be assured as a 50% match based on U.S. EPA requirements. The State has a fund which will contain the $1 million by January 1, 1983 but administratively will not be available until March. The state will give whatever reasonable assurances are required to get work (actual cleanup) going in the immediate future. In return USEPA is required to initiate work as soon as possible on what would be a $2 million increment of the yet undefined total remedy for the site. The State appears totally committed to this effort at all levels. Benefits of timely movement at Seymour are obvious.

Key points to be aware of are:

1) Promising negotiations are underway with generators.

2) Settlement offers from some generators for a substantial amount are anticipated before November.

3) If well handled the State proposed action could serve as an impetus to generators to settle.

4) Removal actions (immediate or planned) are inappropriate based on OSC's investigation and NCP.

5) Initial remedial/source control remedial actions seem most appropriate for timely action within existing standard operating procedures.

Based on discussions with OWPE and OERR it appears that an action could be initiated for part of the total clean-up. The Region V Zone contractor Roy F. Weston is currently initiating a feasibility study for total site clean-up. This work would have to be modified to provide a feasibility study of more limited scope (the $2 million project) to meet NCP justification requirements. Weston would also continue work on the total remedy feasibility study. Obviously the cost of the limited feasibility study would be high due to the need for overtime on the part of the contractor. The overall feasibility study may be delayed a short time.

DRAFT

Although an action is possible, several problems will have to be resolved. They are enumerated below.

1. Care must be taken not to disrupt promising negotiations with generators. DOJ has expressed serious concern for the potential adverse impacts on negotiations.
2. Schedules must be established to blend remedial action with potential settlement by generators.
3. A State contract will have to be entered into as soon as possible.
4. The limited feasibility study, possibly including plans and specifications, must be completed by mid to late September. (The role of the Corps of Engineers will have to be addressed).
5. A decision based on adequate justification will have to be made regarding type of contracting mechanism to be used for the clean-up: a) Emergency b) Sole source c) Limited procurement.
6. Provision must be made to terminate our actions at any point where settlement with generators makes it clear, a timely cleanup of the site is assured.
7. Priority processing will be required to meet a October construction procurement start. Will initiation of the process allow for procurement in October?
8. A determination will have to be made as to proceeding with work based on on the State's assurance that funds will be available in March.
9. Would actions be limited to the $2 million or could further work be undertaken based on a continued State match assurance?

Region V Recommendation

Based on the above information it appears that starting procurement activities in October is possible. A very substantial staff effort, exceeding that associated with the Berlin and Farro site, will be required of Headquarters and Regional staff. A serious risk to promising negotiations could be posed by initiation of action on an expedited schedule. (DOJ has expressed reservations). It may be difficult to justify a limited effort from a cost effective basis but a justfication based on safety or need under any scenario is defensible. We feel it is most appropriate to proceed under an initial or source control remedial scenario. The Seymour project after historic delays is currently moving acceptably within the system and on the dual track.

Mr. **Levitas**. There is one statement that is in that issue paper attached thereto which I'll read to you. This was a document which you prepared for Ms. Lavelle, as I recall.

You say: "Care must be taken not to disrupt promising negotiations with generators. The Department of Justice has expressed serious concern for the potential adverse impacts on negotiations," and that is relating to should you have expedited activity on what impact, if any, would expedited activity have on ongoing negotiations and generators. What did you mean by that, "Care must be taken not to disrupt promising negotiations with generators?"

Mr. **Bartelt**. I think either that same issue paper or one attached to it discussed the fact that how we handled the gearing up for and any eventual execution of this proposed effort would have to be handled very carefully because we did have promising negotiations. And from my perspective, from the regional perspective we did not want to just push headlong into doing something in the field that would significantly jeopardize what we felt was an opportunity to get a complete surface cleanup.

I should give you a little background on the August 5 memorandum.

We had been working on the negotiations. We had pretty much assumed there was not going to be any chance of a cleanup. I think last week you heard the testimony of the State and Mr. Burger indicated that, at the time that the Governor's office was advised that there was a significant problem at Seymour, that something should be done about it. The Governor's office responded by evaluating the possibilities of having something done at Seymour right away. This is a follow-on to that.

Mr. Adamkus evidently had a conversation with Ms. Lavelle. I was given a work assignment to outline what, if anything, we could do for $2 million, $1 million of State money and $1 million of Federal money.

As you can see, I indicated there really wasn't much that we could have done but that anything that we did at Seymour in the way of removing waste could be justified from the standpoint of improving the conditions at the site.

Mr. **Levitas**. But you note the fact that the Department of Justice had reservations about that. Maybe I should ask them.

Mr. **Bartelt**. I can only say that I was advised by my staff that was working in the negotiations process that there was a concern that if we went out there and just started something it might jeopardize the negotiations.

Mr. **Levitas**. Mr. Ramsey, do you know anything about that?

Mr. **Ramsey**. I really don't, Congressman. I don't know whether Charlie does.

Mr. **Levitas**. Any of the Justice witnesses, Mr. Goodloe maybe?

Mr. **Goodloe**. I'm sorry, I wasn't following the question.

Mr. **Levitas**. Mr. Bartelt has a memorandum in which he is assessing the possibility of taking some actions, some remedial action at the site, and in assessing the pros and cons he says the Department of Justice has reservations about this because it might interfere with promising negotiations with generators. And I'm trying to find out what those reservations might have been. This would have been—the date of his memorandum would have been about August 1982.

Mr. GOODLOE. That doesn't ring any bells with me, Congressman.

Mr. LEVITAS. Anybody? Mr. Kyte.

Mr. KYTE. My recollection on that, I think what we are talking about is the Government is just about ready to get into some negotiations with some companies on a surface cleanup, and then all of a sudden you are out there in the field having a million or two spent out there. That could change your equations, and we just wanted to sensitize you to the fact that we are going out with the pro rata.

Mr. LEVITAS. The Justice Department just added 50 corporate defendants to this lawsuit, one of whom I understand was in the process of working out some deal to provide a water supply for the local community. Do you know why the suit was amended or filed at this time and wheher any account was given, whether that would interfere with ongoing negotiations and either you, Mr. Kyte, or Mr. Ramsey, or Ms. Walker?

Ms. WALKER. Excuse me, Mr. Chairman, I thought you were talking about August 1982?

Mr. LEVITAS. I was. I have now shifted over to a new subject. I said I just noticed you filed this lawsuit against the other 50 generators. I also am told that there was at that time, we had testimony the other day and I think it was Monsanto——

Ms. WALKER. At the time we filed in December you are saying?

Mr. LEVITAS. Right.

Ms. WALKER. I see.

Mr. KYTE. I can address that.

We had had negotiations, which is one of the reasons that we did hold up filing this lawsuit as long as we did, this fall with Monsanto and a number of other companies. In early October, a group, they actually formed before that time, and they represented a large group of nonsettlers and they came to us asking if there would be any possibility of being able to work out a negotiated settlement with us as far as remaining liability at the site.

We came back to them with some general principles that we would consider the principles included essential for any negotiations. It would have to be one that would basically address all the outstanding issues at the site, including past costs that had been expended by the Government and a total cleanup of the remaining problems at the site after our studies were completed. And also we did bring up the point that we felt in any settlement, particularly because of the concerns of the locals, that the drinking water system would be involved in that.

Now, we had a response from them and the negotiations, frankly, didn't go anywhere from there. They were not able to commit. Basically, they said, to a blank check because they don't know, once our studies are done, how much will really be needed for a full cleanup at the site, and they just could not get that type of commitment from their generators, and that's where negotiations broke down.

So they may well have been willing to give a drinking water system, without getting into too many specifics and to do certain remedial action which we did not feel could be safely termed enough at this site at all.

Mr. LEVITAS. Well, if they didn't settle on the pro rata basis last year, why was this thing still kicking around? Why wasn't it litigated immediately?

Mr. KYTE. As far as our not filing a lawsuit immediately, there are a number of reasons. I think, one is that we had to collect the moneys that we got pledges for under the covenants not to sue, and a number of issues and delays occurred, as far as the Government, in getting that resolved.

In fact, what we call the first tier of pro rata settlers, which were mostly those on time and a few that came in not too long after the beginning of the new year, we didn't get those collected until really about September. Generally we sent out demand letters for collection of agreed settlement moneys in August. We had a number of issues that we faced that we did not resolve when we sent out the covenant offers of settlement, mainly where to deposit the money once we got it, because of questions of the revolving fund and the Superfund.

Another reason, frankly, I think from the litigations point of view, was we had not had time to devote a lot of our efforts as far as preparing and consolidating our evidence and data, and the time was useful for us in getting our experts onboard, and getting our studies set up, and so forth.

Mr. LEVITAS. I just have a couple more questions, believe it or not.

Ms. WALKER. Mr. Chairman, have you left that subject because I wanted to say something if you had not left it. Without going into any greater detail than Mr. Kyte has, and if the committee was interested, I would ask that it not be in a public session because it does involve ongoing litigation and the exercise of prosecutorial discretion by special litigators who are handling the case, at least from Justice's standpoint, who are not here tonight.

But I would like to say that we were all aware that, as I indicated earlier, the immediate hazard of the surface and the continuing source of contamination was being removed by an active cleanup that was underway. And so the threat to the public of that harm was being removed and in terms of what a complaint being filed 90 days or 60 days or whatever after the settlement could achieve, there was nothing lost there.

We knew we were going to file. We knew we were going to go through with the remainder of the litigation to ensure total cleanup of the site and recoup all the Government's costs. So I want the committee to be assured that we were and are always mindful of the harm to the public and that is our concern, that we need to address that here. The hazard was being abated, and so while we knew we were going to file, there was no immediate necessity to file.

The need to separate settlers from nonsettlers, to know which companies were going to be participating and sending in the money to the Government and, therefore, not to be named in the forthcoming complaint, was something that did occupy the litigation team's time, and appropriately so. And the willingness to perhaps include a groundwater settlement, or to at least look at that, was something that they were also interested in doing. But, again, I just wanted you to know that we were mindful of the public concern.

Mr. **Ramsey**. There is one other specific item, too, if I may, Mr. Chairman, and that is that there is a fund in excess of $5 million that is available for just the kind of things that folks in Snide Acres are concerned about, if it is in the judgment of the various health and public health and safety and environmental folks at the State, local, and Federal level, that that's what the money ought to be used for.

I don't think the Government is going to have any objection to it, so that in that sense I don't think anything has been lost by Monsanto's trying to pay $300,000 and get out of a lawsuit.

Mr. **Levitas**. Contrary to what has been suggested by Mr. Lucero and yourself primarily, and I guess by Mr. Biros and perhaps some of the region V people, based on what I've seen, I don't get the sense that EPA did a great deal to press the State from coming up with its share of the money, and I wonder if any of you could share some further insights with me on that. Because it seems to me that what happened is the State said, well, we don't have the money and therefore it's EPA's baby. And EPA said, OK, we'll take it on.

I certainly expressed myself in terms of the national responsibility that we have, but the State of Indiana, as other States, have their responsibilities too, and simply being unwilling to come up with necessary funds is not tantamount to not being able to.

There is an area that we are going to be looking at, by the way, for legislative change other than just changing it from 50-50 to 90-10. I want to know what did you do to press them and say, look, they are your citizens, they are your constituencies, you have got to come up with some money and share this responsiblity.

Mr. **Lucero**. Let me offer you what recollection I have. I think this can be supplemented from region V, but what I'd like to share with you is one specific set of discussions that we had in the Agency that I participated in. The problem in the State of Indiana was that there might have been a willingness on the part of the executive branch to try to arrange a financed cleanup but they couldn't get the legislature to go along with them.

The position that the Governor made that I heard second or thirdhand, once through Rita Lavelle and also through the region, was that they understood that they needed money and that they hadn't been successful in getting an appropriation. And given the philosophy of the legislature of that time, it just wasn't in the cards.

What the State of Indiana did at the beginning of August was fairly unusual. I mentioned this or at least touched on it in my testimony. They came up with this fairly creative idea. They had managed to get the legislature to approve a waste tax that wouldn't be operative until 1983, I believe. They wouldn't begin collecting or have many accumulated resources, or assets, I should say—a better word probably is "receipts"—until perhaps as much as 1 year later.

What the State came forward to propose, given the difficulties they had getting any other concessions from the legislative body which approved the money, was to say: Can we pledge our first year's and our second year's assets in order to make the State match? They were predicting that they might be able to get as much as $2 million out of those receipts, although they were uncertain.

The difficulty that I touched on, and I'd like to point this out again, is that even a removal action in this particular case, because it was a 50-percent site, that is, a municipally owned and operated site, or at least a municipally owned site, required a 50-percent cost share even for removal. So the normal process of using the fund wasn't available, and the difficulty for them was our estimate was that it was going to take $15 million or thereabouts to do the cleanup. Maybe that, with the contingency continuancy factors removed, might have been as low as $10 million, but that still required them to come up with essentially $5 million, unless there were other ways to carve up a site.

As I recall, region V and particularly Mr. Bartelt, they looked at all those. Could we do a discrete component; could we get something done; would the agency accept this pledge, which we didn't, and I don't know, there may have been some other ideas.

Mr. **Bartelt**. Well, basically, you have covered all of them. I can go back even further in history to the time before the statute was passed and I was going around trying to get the attitudes and opinions of all six of our States so that I could represent their concerns as region V contributed to the initiation of the statute.

I talked in Indiana to my program counterparts; I talked to Mr. Berger in the Governor's office; talked to Dr. Blankenbaker. In all those conversations we made it perfectly clear that there would be a State match required, and that as we saw it in any given State in our region there would be a number of sites, and that a small amount of money was not going to work.

Indiana traditionally has had trouble getting large amounts of money. We have had only two States successful in generating what I would call substantial Superfunds. Minnesota has their own statute, and Michigan also has passed a statute. However, Michigan will have to go on a project specific basis to generate funds, so Michigan projects will be prioritized one at a time for the funding. Indiana has a fund; it's a nominal fund.

I think they only have about 500,000 in it right now, but it is, to the best of my understanding, the best that my program counterparts could sell in the State at that time. And it is my understanding that they did make a reasonable effort to translate the information. That is what they could get out of the legislature.

Mr. **Levitas**. Well, I'm not arguing with you about it, but I would say—how do I put this—"bull feathers." That's not true. They come up with money if they need something. If they want to build some roads, they come up with it. I'm not picking on anyone. I'm just saying I give the most charitable and benign explanation. Mr. Lucero and Mr. Ramsey know how I feel about the settlements.

I don't want to keep belaboring that, but on the one hand I think the State of Indiana saying to the Federal Government: It's your baby because we're not going to come up with the matching funds.

On the other hand, you had Fortune 500 companies saying to you: We are not going to come up with the funds unless you let us off of the phase II liability or the contingent liability, or however you describe it. And in between these are Mr. Lucero, Mr. Ramsey, and your litigation team who are faced on the one hand with being stiffed by the State and on the other hand being stiffed by the corporations involved.

That is why I am not particularly pleased with the outcome. I think I understand now very clearly what you were doing and why, but that doesn't change my feeling about it. I just think that in this instance, for a variety of reasons, pressure from an oncoming election, the political considerations, corporations playing tough and the State saying it's yours, not ours, all combine to create a circumstance where we ended up, in my opinion, and I'm speaking only for myself, with a bad deal and one that, in fact, was a sweetheart deal for those who got it. I don't know that I can say it any more clearly than that.

One last question for the record. Mrs. Judy Smith, the Seymour League of Women Voters president, the one who played a major role in bringing public attention to this matter, I gather was the individual who was presented at the hearing before the Federal district judge, Mr. Goodloe, when the consent decree was being submitted.

She said in her testimony the following, and I think this is a fair approximation, that she got called the night before the hearing by somebody, I think from EPA, she said, who asked if she would come in and testify in support of the agreement, which she did.

She also said that she has never to this day seen a copy of the agreement, does not know what is in it, and was operating on the assumption that it assured cleanup of the ground water problems.

I'm wondering if any of you remember Ms. Smith's testimony or any of you can inform us who was able to secure her testimony?

Mr. GOODLOE. I can tell you that someone from the League of Women Voters did in fact offer a statement. It was very much favorable to the consent decree.

In fact, everyone who spoke from the local community, as I recall, was very much in favor of the consent decree. They included, as I recall it, the League of Women Voters, Mr. Boderoff, I believe it is, from the Seymour Chamber of Commerce, and there may have been one other individual but I think those were the two.

The fact that she doesn't have a copy of the agreement I guess is pretty much a lack of initiative. After that thing was signed, we had 100 copies printed and they were laying around there for quite some time.

We distributed them freely without cost to just about everybody that wanted them, except companies whom I think we charged 15 cents a page, or something like that. So the material was available if she wanted it.

I read her testimony, by the way, at least the written statement last week, on the way home, and I noticed that she indicated in that testimony that she got involved with this matter around 1978. That was something that I suppose you probably took up with her. I wasn't here when she testified, but that seems to me, awfully late in the history of Seymour Recycling, based on what I know about it, because some of the prior years would have been just as much a problem at Seymour Recycling as 1978.

I think that, as I recall, and I was just looking at her testimony, she and the League of Women Voters decided to make a study of this after an exploding barrel created a gigantic gray smoke ring which drifted across town. I think that occurred sometime in 1977. She indicated that's what motivated her.

Mr. LEVITAS. That is the point that I was making, and that's why I was trying to find out more about it. Mr. Lucero may be able to give us the name of the EPA official, or Mr. Kyte, but that Ms. Smith is generally held up and paraded around as being the citizen who said this is a good deal. I'm simply suggesting that once we questioned Ms. Smith, I suggest that she may have been a good witness but didn't really have in her state of mind enough information really to shed light on whether it was or was not having been rustled up the night before, and whether she was neglectful in getting the copy of the agreement and studying it is beside the point. It was certainly something that she didn't know about, according to her own testimony.

Mr. GOODLOE. One final comment. Maybe it would be profitable for someone on the subcommittee staff to review her testimony here against what she said in court last October or November.

Mr. LEVITAS. I—immediately following her testimony—I have asked the subcommittee staff to obtain the transcript of that proceeding so we can evaluate it in the number of different components.

Mr. GOODLOE. I don't want to suggest I am accusing the lady. I don't remember what she said exactly. I do remember she was favorable.

Mr. LEVITAS. I don't want to speculate. I think I know why she was favorable. I am simply saying that based on what she testified to, I don't want to say she didn't know what she was talking about, but she did not have access to the information upon which she could have drawn—made conclusions that were really indepth evaluations of the settlement.

Mr. Ramsey, I think, and then Mr. Kyte.

Mr. RAMSEY. I was the person who handled the hearing for the Government, both the argument and the presentation of evidence. It was I, I think I discussed it with Mr. Kyte, who had had some contact with the folks down in Seymour. We had two hearings, the first of which was mostly the judge looking at the agreement and a lot of yammering from all the companies that didn't like the deal that was going down because they were on the outside looking in.

The second time I decided when we went down there we would put on evidence about why this was in the Government's interest, and the United States was the only party at that time that offered evidence. In addition to the evidence we wanted to offer as part of that strategy, I concluded since we had received no public comments from anybody but companies, we did not receive any from the citizens, that I wanted to make sure the court had an understanding, to the extent it was possible of how the folks down there felt.

Mr. Bodorf and his folks from, I think, the chamber of commerce came as well as Miss Smith. Larry can address, I guess, really two points I am going to make. One is that it was clear I think from Miss Smith's, I thought from her statement and certainly in the preparation we did of her before she went on to make her statement, that she understood there was a ground water problem which remained, and a ground water cleanup which was yet to come, that this was not going to be the ground water cleanup; this would take care of the surface.

Second, as Charlie points out, there were consent decrees, but that is not her fault. We should have sent her one. We are grateful for citizens' support in these kind of cases because it is important.

Third, and the point I want to make most—and I will defer to Larry and Bev—is that the Agency went down to Seymour and conducted public meetings that were widely publicized. I don't think anyone interested who went to one of those meetings, given the presentation that was made and the folks that were made available, would have been confused about the extent of the cleanup.

All I can say is if Miss Smith was unhappy or believes she was misled, that is most unfortunate. She was an effective representer of her community's view about what she referred to as the "monster" in her backyard. That was an effective statement about the problems that existed at the site. But in terms of really what went on there, I think I have given you some of the flavor for the way the Government handled that, both in terms of public meetings in Seymour as well as in talking with her at the time.

Mr. **Kyte**. Congressman, if I could just add, I was present at the meetings down at Seymour where we did brief the public. It was made quite clear from my recollection that we still had a problem, and that as far as the subsurface, that that was not addressed; by the cleanup of the 24 generators, that the pro rata approach would hopefully give us the money to address that, and that we intended to proceed against the others.

Also, from my recollections of the hearings, Mr. Ramsey went through great pains of having to explain to the judge that we still—this settlement was not going to take care of the surface problem—excuse me, the ground water problem. Miss Smith was there. She may have had some confusion. But I am surprised at that statement.

Mr. **Levitas**. Well, I would commend Mr. Ramsey and Mr. Kyte; if you are interested, that you look at Miss Smith's testimony on this subject, both her response to our questions as well as some implications even in her prepared statement. I do this only—you are doing what a cautious attorney should do. You want to build a record, obviously, to have citizen activists come in and say it is good for the country and everything like that. Not only does it add weight to the judge's own determination, but it reads well on the record, also.

I suggest, however, that if someone comes along and wants to collaterally attack that decree, that they are going to go after that type of situation and find out just what she knew as the basis of her testimony. I am not passing judgment on that. I think I have expressed myself overly directly on the subject.

Mr. **Ramsey**. In that regard, could we get a copy of that? I would like to see what she said. Could you make a copy of the transcript available? That would be terrific. I remember Miss Smith real well.

Mr. **Biros**. Mr. Chairman, if I may add a couple of recollections of that hearing, as well.

As Mr. Ramsey indicated, Miss Smith was concerned about the Seymour monster and had been concerned for some time. She stated so at the hearing. She also was aware there was a distinct surface—distinct pair of problems concerning the surface and subsurface. She was pleased that the surface aspect was going to be addressed by the consent decree; however, still indicated some concern about how the subsurface cleanup would be accomplished. I think that is basically the substance of her testimony at the hearing in Indiana.

Mr. LEVITAS. I think you will find her fears about the subsurface situation have been exacerbated by intervening events.

In any event, her testimony will speak for itself. I think you ought to take a look at it.

Mr. Molinari, any further questions?

Mr. MOLINARI. I just think, Mr. Chairman, before we adjourn, that we should at least discuss a potential date for the executive session.

Mr. LEVITAS. Yes. We will have an executive session. Hopefully, this is the last meeting of the subcommittee for this year.

Mr. MOLINARI. I wondered whether you wanted to take a supper break tonight?

Mr. LEVITAS. No.

Mr. MOLINARI. Or come back tomorrow morning?

I will leave that up to you.

I did want to express, Mr. Chairman, this member's gratitude to all of the members of the panel that have testified, and the staff behind them. I know it has been a long, arduous day for all of you. But I think it has served the subcommittee's purpose well.

I deeply appreciate the cooperation that we have received from you today; in some cases, the candor, the expertise. I think it is helping to develop a good record because the Seymour case is one that has achieved a great deal of notoriety. We can look back at this one and build upon it.

So I am grateful to all of you for your patience and understanding.

Mr. GOODLOE. I have a question. If there is adjournment, does that mean we are excused?

Mr. LEVITAS. You are excused. You are excused. As far as this panel of witnesses is concerned, you are excused. If any of you are needed for a future hearing or for this executive session, you will be recontacted. And I am going to ask our staff to get in touch with you for purposes of scheduling that executive session on those matters we left untouched.

I want to express my appreciation, as well, to all of you for your contribution to our hearing. I have a much better understanding, I think, than I did this morning when we began; and I hope that that better understanding will lead me, hopefully, at some point, to a greater tolerance of the situation.

I must say, because to do otherwise would be inappropriate, that I am disappointed to have heard Mr. Lucero's response to my question that even in light of the new policies that EPA, in his judgment—if that Seymour matter came up today, you would think it would be handled in the same manner with the same type of settlement. I would hope that that is not the policy of Mr. Ruckelshaus, because I think there are other ways that this could have been handled more quickly with a better deal for all concerned.

That is just my opinion at this point. But I think it is important that you be aware of that, because as we call the witnesses in the next 4 or 5 days of hearings, it will still be my state of mind as I approach those hearings. I just think fairness requires that you know my feelings on the subject.

I want to thank Mr. Molinari for his very diligent and incisive questioning today, and I do believe we have made an excellent record.

I wish all of you a very happy new year.

The subcommittee stands in recess subject to the call of the Chair.

[Whereupon, at 7:10 p.m., the subcommittee adjourned subject to the call of the Chair.]

[The following were received for the record:]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOURTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
) CIVIL ACTION NO.
v.)
) IP 80-457-C
SEYMOUR RECYCLING CORPORATION)
et al.,)
)
Defendants.)

AFFIDAVIT

County of Cook)
) SS
State of Illinois)

I, Beverly Kush, being first duly sworn do hereby affirm and say as follows:

1. Since January 1981, I have been employed as an on scene co-ordinator by the United States Environmental Protection Agency (U.S. EPA) Region V.

2. In that capacity, I am assigned as the U.S. EPA on scene co-ordinator of clean-up activities at the Seymour Recycling Corporation (Seymour) site.

3. As part of my duties, I made a routine site visit on January 17, 1983. During that visit, I was told by Scott Schedell of Chemical Waste Management, Inc. ("CWM") that trucks had taken crushed drums off the site that morning for disposal at Evergreen Landfill in Northwood, Ohio. This was the first time I learned of CWM's use of the Evergreen Landfill. I called Mr. Schedell's attention to the fact that Evergreen Landfill was not one of the six facilities for disposal listed in the work plan appended to the consent decree. I told Mr. Schedell that although the Evergreen site itself did not appear to be a problem, the use of a non-listed site must be looked into. I

87-13-46

did not, however, expressly order CWM to stop making shipments to Evergreen Landfill.

4. Also on January 17, 1983, I was told by Mr. Schedell that CWM was in the process of purchasing a disposal facility called Solvent Recovery and Reclamation ("SRR") and would like to send waste there. My impression was that any disposal at SRR would not take place for a month or two. I indicated that the site seemed acceptable but that because it was not listed in the consent decree it would have to be looked into.

5. On January 26, 1983, I made another routine site visit. At this time, no one from CWM told me about any shipments to SRR.

6. On February 1, 1983, I spoke with Robert Morris, a trustee under the consent decree. Mr. Morris told me that CWM had recyclable materials at Seymour that it would like to take to SRR. He told me that he had spoken with the U.S. EPA's Office of Solid Waste in Washington, D.C. and the Indiana State Board of Health. Mr. Morris said that since SRR was not a site listed in the decree and since recycling was not specifically mentioned in the work plan, the appropriate written request and notifications would be made. CWM did not submit such a request until March 14, 1983.

7. During the first week of February , I received a copy of CWM's monthly activity report which recorded three shipments to SRR, two on January 26, 1983 and one on January 27, 1983. This was the first time I learned of the shipments to SRR.

Further affiant sayeth naught:

Dated: March 23, 1983

Beverly Kush
Beverly Kush

Subscribed and sworn before me this 23 day of March, 1983.

Dorothy Uttermeyer
Notary Public
My Commission expires July 22, 1986

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. SEYMOUR RECYCLING CORPORATION *et al.*, Defendants,	)	CIVIL ACTION NO. IP 80-457-C

REPLY TO STATUS REPORT

Plaintiff, United States, by its undersigned attorneys, on behalf of the Environmental Protection Agency ("EPA"), hereby submits the instant Reply to the Status Report submitted to the Court on March 10, 1983, by Chemical Waste Management, Inc. ("CWM"). CWM's Status Report was submitted under the provisions of Paragraph VI of the consent decree entered by this Court in December 1982 and discusses the progress of the surface cleanup of the Seymour hazardous waste site during the months of December, January, and February. Counsel for the United States submit this Reply to address what they believe are erroneous statements in the CWM Status Report.

In its January report, CWM identifies as a problem the accumulation of crushed drums resulting from "both external and internal pressures" against the use of three of the six disposal facilities identified in the cleanup work plan appended to the consent decree. CWM states that its counsel determined that disposal could be effectuated at any appropriately permitted facility owned or operated by CWM. Accordingly, CWM states that it immediately began shipments of crushed drums to its permitted Evergeen Landfill facility, a facility not identified in the consent decree. CWM erroneously claims that "EPA's on scene co-ordinator was notified of our decision and actions and indicated approval." As the January Activity Summary appended to CWM's submittal demonstrates, shipments to Evergreen Landfill commenced on January 7, 1983. EPA's on scene co-ordinator, Beverly Kush, was not aware of the shipments to Evergreen until January 17, 1983, when, during a site visit she inquired as to the destination of trucks which had left the site that morning. At that time, she was verbally informed of the shipments to Evergreen. Nine shipments had already been sent to Evergreen prior to her notification. Although Ms. Kush did not specifically order CWM to cease shipments to Evergreen, she did call to CWM's attention the fact that Evergreen was not listed in the consent decree and indicated that its use would have to be looked into.

Similarly, CWM states that using the same advice and rationale concerning the use of non-specifically listed CWM sites, it shipped solvent materials to another non-listed facility, Solvents Reclamation and Recovery ("SRR"). CWM inaccurately claims that "EPA's on scene coordinator was informed of this and agreed with our actions." During Ms. Kush's January 17, 1983 site inspection, she was told by CWM that it was in the process of buying this facility and would like to send waste there. Ms. Kush's impression was that any disposal at the SRR facility would not take place for a month or two. Again, she indicated that the site seemed acceptable but that it would have to be looked into. The Activity Summary appended to CWM's January Report shows that three shipments were made to SRR. Despite the fact that two shipments were made on January 26, 1983, and one on January 27, 1983, CWM did not notify Ms. Kush of this fact when she spoke with them on January 26, 1983, during a site visit. Ms. Kush did not learn of those shipments until she received a copy of CWM's monthly activity report during the first week of February.

On February 1, 1983, Ms. Kush spoke with Robert Morris, a trustee under the consent decree. This conversation was subsequent to the three shipments to SRR, and prior to the government learning that such shipment had been made. Mr. Morris stated that CWM had recyclable materials at Seymour that it would like to take to SRR. He indicated that he had spoken with EPA's Office of Solid Waste in Washington and the Indiana State Board of Health. Mr. Morris said that since SRR was not a site listed in the decree and since recycling was not specifically mentioned in the work plan, the appropriate written requests and notifications would be made. CWM did not submit such a request until March 14, 1983.

Consequently, counsel for the United States wish to make it clear that contrary to CWM's statements, EPA's on scene co-ordinator did not approve the disposl of waste at sites not listed in the consent decree. Even if her actions upon learning of the shipments are construed as tacit approval, that does not alter the fact that CWM made shipments to those facilities prior to providing any notification to the government.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

TE:

SUBJECT Information we have on
Chem Waste Management

FROM: Mitchell E. Burack, OEC-Waste
Lawrence W. Kyte, Region V

TO: Kirk Sniff, Acting Associate Enforcement
Counsel for Waste

Several Violations of the consent decree by CWM were brought to light as the result of a truck accident on January 25, 1983. The accident occured in Richmond, Indiana when a CWM truck struck an overpass and overturned. The subsequent investigation revealed several violations of the Seymour consent decree by CWM. These were summarized in a meeting on March 7, 1983 between government officials, CWM and the trustees. CWM has agreed to correct deficiencies, to undertake measures to assure that the problems don't reoccur and pay a $3,000 penalty. The violations were reported to the court in a status report. They included.

1. Shipments were sent to Evergreen landfill in Northwood, Ohio on at least 4 days before the OSC became aware of the shipments. Shipments continued after that date (January 17, 1983) until about February 23, 1983 when EPA made clear its position that such shipments were not permitted under the work plan attached to the consent decree. The plan lists 6 specified sites. This was done upon advice of CWM counsel who said it was permissible under the consent decree after 3 sites listed in the decre's work plan became unavailable.

2. CWM shipped waste to Solvent Resource Recovery (S.R.R.) in West Carrollton, Ohio. The site is a reclamation facility owned by CWM. Although aware of a desire to ship wastes to the site in the near future the EPA was unaware of 3 shipments to the site on January 26 and 27, 1983. The site is not one of 6 listed in the work plan. Such a variance requires written permission of the U.S. and state.

3. At least one load (the truck in the accident) was not tarped as required by the work plan.

4. The driver of the truck involved in the accident and the dispatcher did not react properly on with knowledge of proper response procedures.

5. CWM failed to give EPA prior notice of the disposal of individual drum samples collected for compatibility tests.

6. The drum crushing area was not properly constructed with berms on all four sides. A variance request which is better than that now in the work plan has been submitted.

87-13-56

In addition to Seymour specific problems the following problems involving CWM are noted:

1. The RCRA program office is planning to issue an AO for $5,000 against CWM for improper groundwater monitoring at Evergreen. Monitoring began 5 months late (April 1982) and improperly used several residential wells.

2. The S.R.R. permit application is missing some information on whether their insurance has the proper RCRA wording. As March 17, 1983 letter was sent CWM requesting this information.

3. CWM's "OLD" site in Vickery, Ohio (one of 6 listed in Consent Decree) has been discovered to have waste containing PCBs in tank storage. No waste are being disposed of there for now until issue resolved, but they will continue to store up to capacity. 100-300 ppm level according to CWM.

4. The State of Illinois on March 21, 1983 sued CWM for improper disposal of wastes at "CID" in Calumet City, Illinois. This site and "ESL" in Joliet, Illinois were listed in the Seymour work plan. CWM will not use because of public opposition and failure to get state supplemental permits.

5. Wheeler landfill in Wheeler, Indiana is no longer being used as a hazardous waste site. Public opposition was involved. It was a site listed in the Seymour work plan, but not used.

6. A site in Emelle, Alabama is now the only one of six listed sites in the Seymour work plan that CWM can use.

7. Due to a lawsuit by the State of Alabama to prevent a new "CWM" landfill in a 100 year flood plain elsewhere in the state, repurcussions at Emelle are possible.

Respectfully submitted,

Assistant Attorney General
Land and Natural Resources Division
United States Department of Justice

CHARLES GOODLOE, JR.
Assistant United States Attorney
Indianapolis, Indiana

OF COUNSEL:

Mary Gade, Esquire
Lawrence Kyte, Esquire
U.S. EPA, Region V
Chicago, Illinois

Mitchell Burack, Esquire
U.S. EPA
Washington, D.C.

JOHN C. HAMMOCK, Trial Attorney
U.S. Department of Justice
Washington, D.C. 20530

STATE of INDIANA

STATE BOARD OF HEALTH
AN EQUAL OPPORTUNITY EMPLOYER

1816

INDIANAPOLIS

Address Reply to:
Indiana State Board of Health
1330 West Michigan Street
P. O. Box 1964
Indianapolis, IN 46206

9/30/81

September 18, 1981

Mrs. Anne M. Gorsuch, Administrator
U.S. EPA
201 M Street, SW
Washington, D.C. 20460

Dear Mrs. Gorsuch:

Re: Seymour Recycling Corporation
Seymour, Indiana
Superfund Activities

Please be advised that Seymour Recycling Corp., Seymour, Ind., continues to be the priority site for Comprehensive Environmental Response, Compensation and Liability Act of 1981; PL 96-510, "Superfund" activites within the State of Indiana. The State of Indiana intends to participate in activites under "Superfund" to the maximum extent possible and pursue the clean-up of this site.

Be assured that this office, working in concert with the Office of the Governor and the Environmental Management Board, will continue to work closely with EPA staff in a partnership role in order to affect an orderly clean-up program.

It is our desire to pursue the long term clean-up activities at Seymour on a phased approach. We understand that for the Seymour Recycling remedial action activities, the cost sharing arrangement at present will be at least a 50% state/federal match.

We will be researching various funding avenues and will pursue state monies where available, subject to constitutional and legislative authority, to provide the match necessary for all "Superfund" financed remedial actions throughout the state.

We request and encourage the U.S. EPA to provide interim financing from whatever sources are available in order to maximize our efforts under the phased approach outlined above.

rm 881

We hope this information illuminates our position with respect to our continuing Comprehensive Environmental Response, Compensation and Liability Act of 1981; PL 96-510, "Superfund" activities. This letter has been reviewed and concurred in by the Office of the Governor.

Sincerely,

RONALD G. BLANKENBAKER, M.D.
STATE HEALTH COMMISSIONER
INDIANA STATE BOARD OF HEALTH

cc: Hon. Robert D. Orr, Governor

Michael Cook, Director,
Office of Emergency and Remedial Response

✓Richard Bartelt, Director
Office of Superfund, Region V

UNITED STA' ENVIRONMENTAL PROTECTION ' NCY
REGION V

DATE MAR 20 1980

UBJECT Meeting with William Vance, Receiver for
Seymour Recycling Corporation, March 4, 1980

FROM Robert Leininger, Attorney
Enforcement Division

TO Addressees

On February 22, 1980, a Petition for the appointment of a Receiver was filed by the Indiana Attorney General's Office on behalf of the Environmental Management Board. On February 25, Judge Robert Brown of the Jackson County Circuit Court entered an order appointing a local attorney, William E. Vance, receiver of Seymour Recycling Corporation. Since such entry, therefore, Vance has had legal control over the corporation. Copies of the Petition and the Order are attached hereto.

Because of this new development it became necessary for U.S. EPA to meet with Vance as well as representatives from the Indiana Attorney General's Office and the State Board of Health. Consequently, a meeting was set for March 4, in Seymour, Indiana at the law office of William E. Vance. A photocopy of the attendance sheet is attached hereto.

The first area of concern which arose was the possibility of federal funding to provide for a cleanup. I stated that the only funding presently available was through Section 311(k) of the Clean Water Act. I explained the jurisdictional requirements and pointed out that while the request for funds should be made, there was no assurance that any funds would be forthcoming, especially since the Coast Guard may be wary of spending any funds for such a problem where navigable water is not as directly affected as is the case with an oil spill. Nevertheless I said that I would help in whatever way I could to push for such funds.

I then asked Vance if he had formulated any ideas on how to best use his position as receiver to work toward a cleanup. He emphasized that he had no funds with which to do much of anything and that he really didn't know where to begin other than to ask the waste generators to remove their waste from the site. Since the generators may be the only solvent defendants I expressed some concern about allowing them to enter the site in a random fashion and remove barrels. He agreed that the best approach in dealing with the generators was to:

1) As far as possible identify the waste on site to its generator.

2) Determine through log books and files the total amounts and types of wastes brought on site by each generator.

3) Have a single contractor remove the waste in an orderly and safe manner.

4) Allocate the cost as equitably as possible among the generators participating in the clean up.

STATE OF INDIANA) SS: IN THE JACKSON CIRCUIT COURT
COUNTY OF JACKSON) ANNUAL TERM, 1980

FILED
[illegible] 12 1980

ENVIRONMENTAL MANAGEMENT BOARD)
OF THE STATE OF INDIANA)
VS) CAUSE NO. 78 C 53
SEYMOUR RECYCLING CORPORATION)

PETITION FOR THE APPOINTMENT OF A RECEIVER

Comes now the Plaintiff, Environmental Management Board of the State of Indiana, by THEODORE L. SENDAK, Attorney General of Indiana, by and through Harry John Watson, III, his deputy, and petitions the Court pursuant to IC 34-1-12-1 and T.R. 66 to appoint a Receiver for Seymour Recycling Corporation for the following reasons:

1. That the Defendant is an Indiana corporation organized under the laws of the State of Indiana with Articles of Incorporation filed with the Secretary of State on June 24, 1976.

2. That Defendant was engaged in the business of recycling of chemicals at Freeman Field, Seymour, Indiana.

3. That the Defendant has failed to comply with an order of this court dated June 30, 1978, ordering a clean-up of the site at Freeman Field.

4. That a substantial change in conditions has occured within the last month wherein the corporation no longer is actively recycling materials at the site.

5. That the corporation has been restrained by order of this Court from removal of corporate assets from the site.

6. That former counsel for the corporation, Edward A. Pollen, has withdrawn from this action due to insufficient payment of attorney's fees on February 7, 1980.

7. That Charles Clay and Joseph Pittman, former employees of the Defendant, in open court on February 14, 1980, stated that they had not been paid for their services and had been terminated.

8. That the Restraining Order sought on February 8, 1980, and continued in effect on February 14, 1980, was based upon the danger of loss of assets as contemplated in IC 34-1-12-1-Third.

9. That the corporation is not now capable of complying with the Agreed Order of June 30, 1978.

10. That the corporation has failed to respond to the Restraining Order of February 14, 1980.

11. That the Corporation has failed to file an annual report with the Secretary of State for 1979.

12. That inspections by employees of the State Board of Health and the County Sanitarian in the month of February, 1980, indicate that there is no present capacity at the corporate site to comply with this Court's Order to reduce inventory and clean the site.

13. That the Plaintiff's allegation as to an increase in the number of drums is unrefuted.

14. That the Corporation appears to be insolvent and unable to meet its obligations.

WHEREFORE, Plaintiff petitions this Court to appoint a Receiver for the Corporation with direction to clean-up the site and for all other just and proper relief.

Ralph Pickard
Technical Secretary of the
Environmental Management Board

THEODORE L. SENDAK
Attorney General of Indiana

By: ______________________
Harry John Watson, III
Assistant Attorney General

Office of Attorney General
219 State House
Indianapolis, IN 46204
Telephone: (317) 232-6324

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

DATE:

2/15/82

SUBJECT: Seymour Recycling Corporation - Meeting with Generators at Justice Dept. in Washington D.C. on Jan. 28, 1982

FROM: Larry Kyte, Attorney

Larry Kyte

TO: Sandra S. Gardebring, Acting Director
Office of Legal Enforcement

The impetus for this meeting resulted from an earlier effort by the Office of Senator Lugar of Indiana to arrange a meeting between EPA and Generators in order to expedite in the cleanup of the Seymour Recycling site.

Senator Lugar's office was represented by Andrew Klingenstein who led off the meeting by reading a letter from Senator Lugar to Carol Dinkins. Taking the lead for the Department of Justice was Steve Ramsey, Chief of the Environmental Enforcement Section. Also in attendance was Charles Goodloe who represents the U.S. Attorney Office in Indianapolis, Represenatives of EPA Office of Emergency and Remedial Response and the Office of Legal Enforcement Counsel in Washington, D.C. and Larry Kyte from Region V. Attorneys and technical people from approximately 11 generators were in attendance. A complete attendance list is attached.

The meeting covered much of the same ground as an earlier meeting held in Indianapolis, Indiana on Oct. 23, 1981. The generators were concerned about being able to obtain data and studies compiled by the U.S. Environmental Protection Agency in order to have early input into forthcoming U.S. EPA feasability studies that will select cleanup approaches for the Seymour site. The studies consequentially will have an impact on the cost of the cleanup. Since the generators are potentially liable for the cost of the cleanup they desire that the study not only be sound technically but economically designed. We informed them at this meeting that we intended to give them a groundwater study and a soil contamination study related to Seymour as soon as they were completed. We informed them that the latest projected completion date for the studies was Feb. 12, 1982. We also told them that we would make available earlier studies by OH Materials and KV Associates. Some generators previously have obtained copies of the earlier studies. Finally we informed them that some conclusions and recommendations from the groundwater and soil contamination studies would be deleted as these recommendations would not necessarily be adopted by the Agency itself.

The generators had a number of questions and concerns about when they would get the studies. We informed them that the studies would be available to them by the time that the feasability study was commenced. They also were told that they would have a reasonable amount time in which to comment on these studies and the final versions of any feasability studies. The generators did express interest in a working committee of generators and EPA technical representatives sitting down and having discussions during the study. We told them that we would consider such an option, but that there were disadvantages to this route. Besides the fact that they did not necessarily represent many of the several hundred other generators at the site, the potential for prolonged discussion and debate and pending litigation might mitigate against such a course for their input. However, we told them that we would at least consider the suggestion although we might not accept it in the end.

The generators present at the meeting had previously made an offer to help distribute copies of any studies provided to them to other generators for comment and to offer their services to other generators as a coordinator for providing comments to U.S. EPA. They stated that this offer was still open. We indicated to them that we would be interested in such assistance. The Section 104 notification letter to generators under Superfund may be modified to indicate the availability of this service through Birch Bayh's Office. Birch Bayh represents Cummins Diesel, and has been apparently instrumental in helping coordinate among the generators present at the meeting.

The generators present informed us that they had a meeting to discuss Seymour on January 22, 1982 in Chicago. This meeting was a follow up meeting to an earlier one held in Detroit last fall. The meeting again had about thirty or forty generators in attendance. The generators who organized this meeting had previously sent invitations to sixty or seventy generators. Steve Tasher of DuPont asked if we could provide them with more complete list of generators mailing addresses in order that might contact others generators. Dennis Devlin is presently updating a mailing address list of all generators. We should provide a copy of this list to these generators as soon as possible. After the meeting was over I had some conversations with the other government attorneys at the meeting. We all seem pretty much inclined to believe that a working committee for work on the feasbility study would not be useful or wise in this case. Before the meeting with the generators, all government participants had a briefing meeting in Steve Ramsey's office. At that meeting I presented the newest draft of a Section 104 letter for all generators and a letter to Senator Lugar from Valdas Adamkus, Regional Administrator.

The Section 104 letter which I have drafted proposes that EPA will make available the studies previously mention, and a study by the National Enforcement Investigation Center of U.S. EPA which was conducted in November of 1979. This study has a good deal of analytical data from numerous samples taken near the site. It also contains information on waste at the site as contained the facility's records. I also suggested that a recently completed report by Petro-Chem on the disposal of the bulk tank materials should be made available. The draft letter according to an earlier agreement is to be commented on by all participating offices in the Seymour negotiation, by February 5, 1982.

The issuance of the Section 104 for notification letters to parties potentially responsible for cleanup of Seymour and the commencement of the feasibility studies should provide a sense of momentum and direction to the goverment's cleanup activities. However, in order to keep that momentum I believe we may have to address some critical decisions later this summer. Phase A of the feasbility study should be completed some time this summer. Phase A will provide alternative methods for the removal and disposal of drummed hazardous waste at the Seymour site. It will also provide cost estimates for such removal alternatives. Phase A is expected to be the most straight forward and noncontroversial part of the feasibility study. Once the Phase A study is completed, U.S. EPA will be in a position to commence removal and destruction of the drummed hazardous waste at the site if the State is able to provide its %50 match of the cost. However, it is quite likely that the State will not be able to contribute a significant amount of money this year to such a cleanup effort. If this is the case the Agency may be faced with an inability to commence cleanup according to the completed Phase A plan and remedial design. This dilemma could stall the completion of a cleanup plan for the soil contamination and groundwater problem in the Phase B of the feasibility study. Presently Phase B will not commence a specific design remedy and cost evaluation until further order of the Agency. Such direction is not presently expected to be given until their has been some drum removal from the site in order to allow soil sampling for contaimination to be conducted on site and wells to dug for additional groundwater monitoring on site. This plan could put the Agency in a catch 22 position. Without Phase A surface cleanup being allowed to proceed for lack of funds the Phase B study will not be completed. This will mean that the Agency would not have a total cost estimate for cleanup. Such a total cost figure will be needed in order to negotiate with generators for settlement. Generators will not be interested in making a settlement without agreeing to a fixed dollars amount for their share of laibility. At the same time the U.S. EPA will not be interested in settling unless it feels it has a reliable figure for total cost cleanup in order to avoid the possibility of being stuck with part of the cleanup costs because it under estimated the actual cost of cleanup when settling with generators. I suggest that we may have to consider approaching this case from a concept of reaching different pleateaus. In the likely invent that Indiana can't provide a substantial match this summer when the Phase A study is completed the Agency should be prepared to arrive at a total cost for cleanup of the site for purposes of negotiation. We should explore methods for obtaining reliable costs for the groundwater and soil contamination cleanup without having finally completed the Phase B study. Sources for such a determination include any plans with might be submitted by generators as a results of the Section 104 notification letter, in house estimates derived from available data, and allowing the contractor to proceed in making tentative estimated costs without completion of the Phae B design. If we can arrive at a total cost estimate which we believe is within an acceptable range I would suggest that we consider approaching a certain numbers of generators who have indicated a willingness to enter into a settlement. I would suggest that a manageable number of generators for this round of negotiations would be around ten. Using the available cost estimates we could propose settlement figures to those particular generators. If a significant number of such generators were willing to settle according to acceptable terms we could use such money to commence surface cleanup activities. Any such settlement should be well publicized in order to increase momentum and to pressure non-settling generators to come terms with us. The goal of this round of negotiations should be to obtain a significant amount of money to remove enough drums from the site to complete the Phase B study. Because of the large number of generators at this site we would not be left holding the bag for the costs of groundwater cleanup should these costs rise after the Phase B study was completed. The generators who were tardy in coming forward for purposes of settlement would be then facing a somewhat larger part of the remaining cost. I wish to note that should the settlement money be considered to be fund money that it might be necessary to have the State of Indiana involve in the negotiations in order that the settlement could be split Fifty-Fifty with them. This would give them the fifty-fifty match which would be needed. If the government is able to obtain several initial settlement agreements late next summer that will allow us to keep momentum in this case. It will help to ensure that EPA can continue its efforts to determine a proper means of cleanup and what it will cost. It also will allow us to proceed with some cleanup activities. The progress will put additional pressure on the remaining generators to settle and maybe even make it more feasible for the State to obtain money from its legislature. Visible progress in site cleanup and the need for a smaller amount of State match for certain remaining cleanup actions ought to be a persuasive selling point for the Indiana State Board of Health in Appropriation committee hearings.

cc: Bill Constantelos
Charles Goodloe
Steve Ramsey
David Ullrich
Richard Bartelt
Lamar Miller
Roger Grimes
Jane Schulteis
Beverly Kush
John Hammock
Paul Schaeffer
John Wheeler
Dennis Devlin
Mich Butrach
Bob Leininger

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460

OFFICE OF
LEGAL AND ENFORCEMENT COUNSEL

MEMORANDUM

SUBJECT: Case Update (Seymour)

TO: Frederick Stiehl
Acting Deputy Associate Enforcement Counsel-Waste

Edward Kurent
Acting Associate Enforcement Counsel-Waste

FROM: Mitchell Burack, Attorney

INTRODUCTION

On June 8 we met with a large generator coordinating committee led by Birch Bayh. Their negotiating offer, including a written package received June 3, is basically to pay $4.5 million to the government and thereby obtain a complete release for any generator who will join him. The written package outlines generally a feasibility study their contractor sketched out and costs out a very limited remedial package at $10.5 . The committee's proposal is to pay roughly 1/3 of this cost, "since the named defendants and the State should pay their fair share". The proposal basically ignores the potential soil and groundwater problems.

Steve Ramsey responded at the meeting with doubt as to whether we could acept such a small offer. June 29 was set as a date for the next meeting.

The following negotiating positions have been suggested by various members of the team: 1) Allow small generators to cash out now, based on pro rata waste percentage x $ 30 million (a padded estimate of worst case potential total cleanup cost).

2) Allow all generators to cash out according to above formula.

3) Before anyone cashes out, insist, at minimum, that one or more generators agree to perform or fund the actual cost of, drum removal. If this agreement is not reached by September 1 we should file a preliminary injunction against the top 20 generators.

4) We should be willing to use cash out money for donation to the State so they can match Superfund outlays by US EPA, in the event voluntary cleanup cannot be achieved.

87-13-18V

DISCUSSION

[A. The problem with cash out is that the 30 million figure is quite speculative in light of present uncertainty as to extent of relief needed. The more large generators which cash out the greater our risk of being left with insufficient funds to carry out necessary work. This risk arises from being left with defendants who are either insolvent or difficult to win a lawsuit against.

B. Our risk is minimal as to the small generators. Nevertheless it may look very inequitable to make a distinction like this, especially when "small" includes companies which disposed of 80 tons of material.]

C. [If we offer cash out to all, hoping that the large generators will mostly refuse, we are gambling unnecessarily. Furthermore we are locking ourselves into time delays as we discuss with 200 small generators and various large ones, how to accomplish the cash out. In the meantime, drum removal would be delayed another season.]

D. [Therefore I recommend we take a direct, result oriented approach, ie. option 3. The theory of joint and several liability was made for this case. The justification for this theory is the two years we have floundered trying to figure ways to divide up the liability burden and prosecute our outstanding lawsuit.]

E. I believe the approach of giving cash out money to the State would be bad precedent for EPA policy if it is not outright illegal. This proposal comes from the regional attorney.

Seymour Recycling Site
Seymour, Indiana

Background: The Seymour Recycling site is a 14 acre site located in the Freeman Field Industrial Park three miles from Seymour, Indiana. The facility operated as a chemical reclamation, treatment and storage facility since 1969. It was first operated by the Seymour Manufacturing Company's Chemical Division; was incorporated in 1976 as the Seymour Recycling Corporation; was sold in 1978 to Environmental Processing Corporation which continued the reclamation operations.

The facility was operated in an environmentally unsound manner and large quantities of wastes accumulated and were stored in drums and bulk storage containers on site. The facility was shut down by the Indiana State Board of Health in 1980 after repeated, but unsuccessful attempts by the State to order the removal of wastes from the site.

Present at the site are approximately 60,000 55-gallon drums of solid and hazardous waste. Many of the drums, which contain toxic and flammable chemicals, are rusted, damaged and leaking. The site poses a substantial fire and explosion hazard. Moreover, during the facility's operation, highly toxic and reactive chemicals were spilled indiscriminately and allowed to migrate off site via surface water and ground water. Wastes found on the site include heavy metals, cyanides, chlorinated solvents, acids, bases, phenols, and explosives.

Ownership: The Seymour Recycling site is on property leased from the Board of Aviation Commissioners of the City of Seymour, Indiana. Seymour Recycling Corporation is currently under receivership. William Vance is the Receiver appointed by the court.

Enforcement Status: A civil action under §7003 of the Resource Conservation and Recovery Act was filed on May 9, 1980 against twelve parties. Many of the corporate and individual parties are bankrupt. Two of the defendants are municipal entities.

The EPA strategy to date has been to identify generators and transporters of waste taken to the Seymour Recycling site and seek voluntary cleanup from one or more of the group. Through information obtained pursuant to the 1980 law suit, EPA has identified over 600 generators and transporters of waste at the Seymour site. Notice letters, requesting these companies to address cleanup of the site were sent. Negotiations subsequently commenced with a small group of generators who were able to come forward with a proposal for surface cleanup at the Seymour site. These negotiations culminated in the signing of today's consent decree.

X-1(b)

97-13-185

Clean Up: The work will be done in two phases: surface removal and soil and ground water cleanup. Communications continue with 340 other generators to secure commitment for soil and ground water cleanup.

Chemical Waste Management's (CWM) surface removal efforts will include the following:

1. Prepare site including road construction, establishment of drum crushing center, and placement of decontamination units, mobile laboratories, and office trailers.
2. Seal off on-site wells and underground piping running through the site.
3. Analyze and prepare wastes for transport and disposal.
4. Transport wastes and remaining debris and dispose in CWM's disposal facilities in accordance with regulations under the Resource Conservation and Recovery Act.
5. Remove soil under drums and tanks and visibly contaminated soil to a depth of one foot. This will involve approximately 70% of the surface of the site.

Superfund Status: This was originally a Clean Water Act §311 action. To date, approximately 2 million dollars of §311 and pre-Superfund money has been spent to stop the discharge or eliminate the threat of serious discharge of hazardous substances from the site. Site responses include:

1. Installation of a dike around the site to prevent off-site runon from entering the site and becoming contaminated, and contaminated on-site surface water from leaving the site.
2. Installation of a carbon filtration system to treat contaminated surface water on-site.
3. Sampling and testing of some drums, tanks, soil and water, and segregating incompatible wastes to more secure areas of the site.
4. Installation of security fencing.
5. Removal of over 400,000 gallons of liquids from bulk storage tanks.
6. Preliminary investigation of soil and ground water contamination and determination of the existence and extent of buried waste at the site.

The site has been determined to be municipally owned and, consequently, Indiana must fund 50% of any remedial action taken under Superfund.

SUPERFUND SITE ENFORCEMENT PROFILE

CASE NAME: U.S.A. v. Seymour Recycling Corps. et al.

SITE LOCATION: Seymour, Indiana

ASSIGNEES:	Region V Attorney	Robert Leininger	FTS 353-2094
		Larry Kyte	FTS 353-2094
	Region V Technical Person	Pete Olsen	FTS 353-2110
	On Scene Coordinator	Charles Castle	FTS 886-3006
		Beverly Kush	FTS 886-7572
	Headquarters Attorney	John Wheeler	FTS 382-3087
	Headquarters Technical Persons	Brad Wright	FTS 382-3131
		Dennis Devlin	FTS 382-3129
	Department of Justice Attorney	Paul Schaeffer	FTS 633-5404
		John Hammock	FTS 633-5227
	Assistant U.S. Attorney	Charles Goodloe	FTS 331-6333

I. SITE EVALUATION

The "Seymour Recycling" site is located on land which is owned by the Seymour, Indiana Board of Aviation Commissioners. The site came into being around 1970 when Seymour Manufacturing Company leased the site for use as a reclamation facility.

Prior to the establishment of a reclamation facility the site had been used by Amoco to conduct rocket propellant tests for the Department of the Army. These tests were conducted in Bunkers at the site. The site apparently was clean when Amoco left.

Seymour Recycling contains approximately 60,000 drums of hazardous wastes. Approximately 98 bulk tanks located on site have been emptied of wastes pursuant to a §311 CWA. Sludges remain in some of the tanks. Most of the 400,000 gallons of wastes which were removed from the tanks were incinerated at the Metropolitan Sanitary District in Cincinatti, Ohio.

A wide variety of hazardous wastes or pollutants have been found on or near the site. Most of the drummed material has not yet been analyzed. However, samples which have been analyzed indicate the contents contain paint solvents and thinners. Most of the drums are rusted and in a deteriorated condition. Ascertaining ownership of any particular drum is not feasible because of the lack of any markings. Review of Seymour Recycling Corporation records indicates that many types of hazardous wastes were received in drums. These wastes include dirty solvents from different industries, plating wastes, freon, toluene, trichloroethane, methyl ethyl ketone to name several.

Preliminary ground water studies have indicated that a plume of polluted ground water in a shallow aquifer extends from underneath the site to the northwest where it intercepts a stream called Heady Run. Present information indicates the plume to cover approximately five acres. Preliminary ground water analysis has found hundreds of compounds to be present. Priority pollutants such as naphethalene, toluene, diethylphalate, ethylbenze and tetrachloroethane have been found off site. Priority pollutants in samples from water on site have been found to contain other priority pollutants like benzene, napthalene, phenol and chlorobenzene.

In addition to the wastes left at the site, the factilty contains several buildings. An incinerator and several stills were used at the facility when it was in operation. The site is fenced and surrounded by open fields used for agricultural purposes. The town of Seymour is approximately a half mile away.

Two major hazards exist at the site; combustion and water pollution. Fortunately the distance of residences reduces the hazards somewhat. It should also be noted that the site poses a hazard to trespassers or others entering upon it.

II. RESPONSIBLE PARTIES

Seymour Manufacturing Company (SMC) entered the reclamation business with the purchase of a still around 1968. The still was initially located at the company's plant in Seymour, Indiana, and it was used for cleaning dirty freon. The company has been in the farm hand tools manufacturing business for a long time.

On August 27, 1969, SMC entered into a twenty year lease with Seymour, Indiana's Board of Aviation for the use of 14.44 acres of land, subject to a road easement, for manufacturing and other consistent purposes. Shortly after this the company purchased additional stills and moved all of its reclamation activities to this real estate which is located at Freeman Airfield. Freeman Airfield was an army airfield during World War II. The federal government granted the land to the Board sometime after Amoco's studies were completed in 1967.

Seymour Manufacturing business grew at the airfield. They bought incinerators to burn still bottoms generated in reclamation activities and to burn other wastes received at the stie. Willis Hobson and a foreman John Gregory had management responsibility to the site until 1975. A considerable number of drums of wastes accumulated in this period before 1976. In 1976 the Board of Directors of Seymour Manufacturing decided to spin off the company's "Chemical Division" and form a new company called Seymour Recycling Corporation (SRC). This new company contained the reclamation business of SMC.

tockholders in SMC were given the same share of stock in SRC when it was created. The Board of Directors were basically the same except that a Ken Goodwin was named president and to the Board of SRC. Ken Goodwin had been retained in 1975 to manage the site upon request of the Chairman of the Board of SMC, Stanley Birge, Senior. Upon Goodwin's arrival the Hobsons soon lost control of the management of the Chemical Division.

SMC is a family owned corporation. Stock is owned by members of two related families the Birges of St. Louis, Missouri, and the Hobsons of Seymour. Stanley Birge, Senior was the patriarch of the families. Other members of the Board include Stanley Birge, Junior and Clifford Birge, who are St. Louis Doctors. Also on the Board are Edmund T. Allen, Stanley Birge Senior's brother-in-law, David Millar, an attorney with no stock, and Courtland Carrier, son-in-law of Stanley, Sr. The Hobson family's minority stock is owned by Harold S. Hobson, Jr. and Willis Hobson and their wives. Harold C. Hobson, Senior, died in 1976. The Hobsons run the day to day business of SMC. Willis is president of SMC.

Troubles continued to mount at the SRC site. The state of Indiana frequently observed improper waste handling practices and suspected illegal dumping. Finally, in February 1978 the Indiana Attorney General filed a lawsuit against SRC. A consent agreement was arrived at between the parties which included a schedule for cleanup. At about this time or shortly before, the Hobsons sold their stock in SRC for a nominal amount to a company called Environmental Processing Corporation. On rch 17, 1978, Ken Goodwin resigned. In April or May 1978; the Birges amily sold the remaining stock to Environmental Processing Corporation (EPC) for a nominal amount. EPC was also given a $100,000 loan by SMC at the time of the sale. Some security was given but most of the loan has not been repaid.

EPC is a subsidiary of Chem-Dyne. Bruce Whitten and William Kovacs are the stockholders in Chem-Dyne. Kovacs took over the active management of SRC just before the "sale" of the stock. He used another company which he controlled, Trans-environmental Corporation for transportation of wastes to the site.

A review of SRC records has shown in excess of 600 generators had wastes delivered to the site. These include many fortune 500 companies, and small companies. It has recently been discovered that the Federal Naval Avionics Center in Indianapolis, Indiana had 176 drums of plating wastes sent to SMC in 1971.

SRC, SMC and Transenvironmental Corporation all hauled waste to the site. However, no significant effort has been made to break out and determine the transporters in this case.

The Board of Aviation Commissioners can be expected to be able to provide some money to the cleanup. How much is not certain. SMC employed about 180 employees and earned almost 8 million dollars last year. It can be expected to provide some money. How much money SMC can provide to cleanup if it were liquidated, or how much it could pay without going under is uncertain. Should the SMC and SRC Boards of Directors be held liable additional moneys could be expected. However, it is not expected that all of these parties could provide more than several million dollars, at most. Mr. Goodwin, Mr. Kovacs and Whitten are not expected to have any significant funds. Kovacs - Whitten companies are basically bankrupt.

III. DATA SUPPORTING SITE ACTION

A preliminary study, previously mentioned, was completed in June 1980 on groundwater pollution at the site. Some drums have been sampled and analyzed. The materials removed from the bulk tanks also was analyzed.

EPA is currently awaiting completion of a soil analysis study and a groundwater study which will help more thoroughly define the extent of environmental contamination. These studies are expected to be completed in early December of 1981. These studies will then be used to develop a feasibility and design study for cleanup. This study will be done by Roy Weston. It is expected to analyze alternative methods of site cleanup or containment, recommend a method for remedial action and provide cost estimates.

IV. STATE ACTIVITIES

The state of Indiana has not been an active part in this lawsuit. The former Attorney General was content to follow our lead. The new attorney General may decide to be more active. He needs to be contacted.

V. ENFORCEMENT RECOMMENDATION

Litigation is ongoing against those persons who owned or operated the site. Depositions of SMC Board of Directors have been almost completed. Depositions will continue. Negotiation meetings have been had with around twenty of the largest generators. Most of these generators have expressed an interest in contributing to cleanup. However, the government will not be able to provide a fixed dollar amount request to each generator until the Feasibility and Design study is completed. Once the government has selected a course of cleanup and has firm dollar figures for the cleanup each generator can be given a fixed settlement figure by the government based upon their pro rata share of waste brought to the site.

Negotiations appear promising with a significant number of generators, but because of the sheer number of liable parties and the amount of commingled waste, cleanup should be managed by the Federal government under CERCLA. Settlement and litigation with liable parties can proceed during and after cleanup actions.

Because of a large pool of solvent generators recoupment is likely.

VI. RESOURCE NEEDS

Regional resource needs are as follows:

Regional Attorney = 100% x 24 months minimum
Regional Engineer = 50% x 24 months minimum
OSC = 50% x 24 months minimum

memorandum

R #3

DATE: June [illegible], 1982

REPLY TO ATTN OF: Charles Goodloe, Jr.

SUBJECT: Seymour Recycling

TO: File

on June 8, 1982

At approximately 1:30 p.m., a meeting commenced in Conference Room B, Main Justice, Washington, D. C.; in attendance at the meeting were John Hammock, Paul Schaeffer, Mitch Burack, Dennis Devlin, Kevin Garrahan, Beverly Kush, Rich Bartelt Steven D. Ramsey, Frank Biros, Lamar Miller, Bob Schaeffer, Ed Kurrant, Carol Green, and Charles Goodloe. & Larry Kyte [redacted]

Steven Ramsey opened up the meeting with an introduction of certain of the members who may have not been known, prior to that time, to members of the litigation team and he asked for a presentation. By agreement, among the litigation team, at the 11:30 a.m. meeting, John Hammock presented a short synopsis of the problems which the team desired the supervisors to address. John's general opening and request for a policy decision on the buyout for the small contributors of waste to the site was met with a series of questions. Steve Ramsey had a question on the cost figure of $30,000,000, which has in the past been established as a high figure, for discussion purposes. He questioned whether the figure was realistic. Dennis indicated that it might be substantially high. Lamar Miller also questioned the $30,000,000 figure; he wanted to know if the figure could be supported. It was indicated, in general fashion that the cost figure of $30,000,000 might be somewhat difficult to justify, except when one considered that not all such companies in the small contributor category would pay, and that the actual cost of the cleanup was unknown as of the day of the meeting and probably unknowable, since no onsite examination had been performed. It was explained that for such reasons, the artificially high cost figure of $30,000,000 was selected as an outside, "super high" cost figure.

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

The question was raised as to whether the buyout for small contributors could be extended to those that were earlier thought to be in for a pro rata share. The general consus of the team was that so long as a contributor over one-tenth of one percent, wanted to buy in at the highest possible cost figure ($30,000,000), we should be inclined to take it. Another question was whether there was an error factor in the $30,000,000 cost figure. Dennis said that there could be 30% or more error in the involvement of those named in the small generator capacity. He felt that no substantial error existed with regard to the larger generator involvement. Dennis noted that the tonage factor could also be off slightly. He added that it could even be off more than slightly and said we will not know the exact amount of the gross tonage to the site until Intera concludes its work.

Lamar Miller wanted to know if we could rely on the tonage and the $30,000,000 figure, in light of the statements about potential error. He felt that in order for us to settle on a figure for the small contributors, it would necessarily call for us having a position with regard to the larger contributors who may want to buy in at that price. All, of the team, seem to be of one mind that we could accept a purchase of a part of the $30,000,000 figure, by the larger contributors, if they wanted to buy in at that inflated price.

Steve Ramsey took the opportunity to assess the work of the team, thus far. He stated that all of the lawyers in the government were experience enough to know how to get a decision from the decision makers in government. He stated that in order to obtain such a decision, the lawyers should put together a legal memorandum citing all relevant facts, policy and law and present to the decision maker or makers alternatives. He said that such a memorandum would make the work of the people in management much easier. He went on to state that the case was not moving, that it was now more than 2 years old, and that the team seemed to be wandering aimlessly. He said that the agenda presented to him the day before he was to meet with us, was unacceptable. He believed that the agenda should have been presented to him at least 2 weeks before the meeting. He stated that it was unrealistic for us (the litigation team) to expect any of the supervisors to come in and listen to a proposal and make a decision, without prior preparation of the supervisors for making such a decision by the appropriate legal memoranda. He stated that he did not see that he could actually go into a meeting with the companies and feel comfortable in making a statement about anything that occurred at such meeting, without adequate briefing before such a meeting with the companies, and that, as of this date (June 8, 1982) he did not have it.

Lamar took the opportunity to indicate that he did not believe that we were adequately prepared to go to court, and that it was unrealistic to expect that we were not going to have to go to court. He argued that the team should get prepared to go to court and then send a letter to the companies demanding that they either come in and settle or be prepared to go to the courthouse. He thought that the letter should give the companies a period of time (perhaps 30 days) to make a decision on whether they want to voluntarily participate in the cleanup, and after the appropriate period of time had elapsed, such companies would then be joined in the lawsuit.

Ramsey went on to say that once he had gotten all of this off his chest, he would not mention it again and would expect to be aprised of the developments in the case in the appropriate fashion so that he would not have to make statements about this matter again. He then asked Bob Schaeffer, Regional Counsel, EPA Region 5, Chicago, as to whether he had anything to add to what had been said by he and Lamar Miller. Mr. Schaeffer indicated that he did not have as much, in the way of comments, about the progress of the case thus far. He is relatively new as Regional Counsel and had received a briefing from Larry Kyte before coming to the meeting. He did think that the team was going to have to move along with regard to the case and be prepared to litigate it. He observed, however, that he "smelled a settlement" in this case, and for that reason did not want to throw cold water on the idea of getting the small contributors to pay something by an early buyout.

I responded to Steve Ramsey by stating that I for one and perhaps some others, was willing to take a rebuking with regard to my part of the case, however, we had not, in the past, been able to get a decision on certain matters to which we needed decisions. All were informed that in the last year we had taken several depositions, had obtained most of the documents from Seymour Recycling, and would be receiving the remaining documents in the next few days. Ramsey asked whether anyone had seen the documents in the case; I inquired as to whether he was referring to particular types of documents. He just said documents. I informed him that Paul Schaeffer and myself and Larry Kyte had looked at virtually all of the documents which were obtainable from Seymour Recycling. I told him that we had spent several hours and, in my case, several days in the office of the receiver going over financial records, correspondence records, personnel records and the so-called "generator records".

Lamar Miller indicated that if we thought we could go with a buyout of the smaller contributors and we had a supportable figure in the $30,000,000, that he had no objection to it, and would endorse the implementation of a buyout. Ramsey, likewise, indicated that he would go along with the buyout so long as it was something that was sustainable. He indicated, however, that those kind of things were going to be signed by the Assistant Attorney General of Land and Natural Resources, Mrs. Dinkins, and, for that reason he would have to be sure that the buyout plan could be supported.

A question was raised as to whether we have our cost estimate. It was indicated to the supervisors that no cost estimate was yet available. Ramsey indicated that it took us two months to get out the 104 letter, which he had indicated at the January meeting, would be put out within a month. Lamar Miller indicated that he would have to take responsibility for the delay in getting that letter out.

With regard to the failure to have a cost figure, it was indicated that a design and feasibility study was to be undertaken and that a contractor had been engaged for such work. It was further indicated that such contract had to be in process by the end of the month. The explanation for that was that the money had been committed, and that if the contractor was not working pursuant to the contract, by the end of the month, the money would revert back to the treasury.

Another question arose as to whether the cost figure was realistic and Beverly Kush and Dennis Devlin indicated that the cost figure of $30,000,000 was high. Beverly indicated that she was supervising the cleanup work at Mitco in Gary, Indiana and had some idea of cost ranges. Rich Bartelt, her supervisor, also indicated that he had some idea of the relative cost of cleanups. Both Rich and Beverly were of the opinion that the cost figure of $30,000,000 was substantially inflated and that it should be sufficient for us to offer a buyout plan to the smaller contributors. Ramsey was a little reluctant to have us get committed to a plan that might result in the government being locked into a figure that was substantially less than was needed to do the job. There seemed to be a general consensus that the cost figure of $30,000,000 was more than would be required for the job.

The meeting wound down at approximately 3:00-3:30 p.m.; it began at approximately 2:10 p.m., in light of the fact that the supervisors were in other meetings and could not commence the meeting promptly at 1:30 p.m. The general consensus was that a buyout plan could be offered to the smaller contributors of waste to the site; however, we had to make sure that it was workable.

A question arose as to what could be offered to these smaller contributors in the way of a release or covenant. The suggestion was that a covenant might be the best means of handling the matter and that a release should not be offered.

Memorandum

#8

SDR/JCH
90-71-131

Subject: Seymour update

Date: June 16, 1982

To: Stephen D. Ramsey
Chief, Environmental
Enforcement Section
Land & Natural Resources
Division

From: John C. Hammock
Paul J. Schaeffer
Trial Attorneys
Environmental Enforcement
Section

This is in response to your request for a memorandum regarding, inter alia, the Seymour litigation team's recommendations for settlement with the generators as a result of the large generator group settlement proposal presented to us on June 9, 1982, and in anticipation of our second meeting with that group now scheduled for Tuesday, June 29, 1982.

As was mentioned to you on Tuesday, June 15, 1982, we had hoped to include in the instant memorandum information from Dennis Devlin, EPA-HQ technical person, relative to that office's review of the large generators' technical proposal for cleanup. Likewise, Dennis is in the process of putting together a memorandum to us providing justification for the settlement "cash out" figure of $30,000,000 (thirty million dollars) which we would like approval of in negotiating with the small generators and which figure we now also propose to use with the large generators (see infra). By telephone yesterday (June 15, 1982), we learned that neither Dennis' memorandum nor another memorandum being prepared by Region 5 would be available later this week. Therefore, in view of your request yesterday for receipt of a memorandum today, if possible, since you will be away from the office the rest of the week and probably busy with other matters most of next week the instant memorandum is submitted without benefit of information we had hoped to incorporate herein after receipt of memoranda from EPA-HQ and from the Region as explained above.

As you know, when Jose Uranga, who together with Birch Bayh is legal counsel for Cummins Diesel, one of the large generators, notified us by telephone that "the Bayh group" of ? large generators wished to submit a cleanup proposal to us, we asked that such proposal be submitted to us for review a full two weeks prior to the meeting we scheduled with them, at their request, for Wednesday, June 9, 1982. However, we did not receive anything from the group until close of business on Thursday, June 3, 1982, and what we did receive we were told was not the final proposal but rather a summary of what the final cleanup proposal would be together with generally-stated technical aspects of a proposed cleanup by a particular contractor. We have yet to receive from the Bayh group the actual technical cleanup proposal prepared by Canonie, the contractor. Apparently unknown to the Bayh group, we did obtain access to a copy of the actual technical proposal by Canonie. This was obtained recently from the Seymour, Indiana Chamber of Commerce but we did not receive a copy until June 8, 1982, the day prior to our meeting with the Bayh group, at which time the litigation team met with you, Lamar Miller, Bob Schaefer, et al.

As we discussed at the end of the day subsequent to our meeting with the Bayh group on June 9th, the $4.5 million cleanup proposal, by which the government would be expected to seek an equivalent amount of money from the City of Seymour and from Seymour Recycling Corporation and give a full release to the Bayh group even though their proposal does not really address the groundwater contamination problem, is unacceptable.

We recommend taking the following posture and making the following counter-offer to the Bayh group when we meet with them on June 29, 1982:

(1) Tell them upfront that, just as we indicated in the notice letter, we expect the generators to do the cleanup themselves and that their proposal, which essentially asks for a "cash out" with the government doing the cleanup is not acceptable as there is no Superfund money (Indiana won't come up with the necessary matching funds), and is otherwise unacceptable for the reasons already discussed.

(2) No full release would be appropriate without a total cleanup including groundwater. Therefore, any cleanup proposal from them, to be acceptable at all, would have to address sub-surface cleanup costs. If they will not address sub-surface cleanup, then the most we could negotiate would be a partial release in exchange for a surface cleanup proposal which details the mechanics of the drum removal and provides for an adequate cost figure covering the entire cost of drum removal without a contribution from the City or Seymour Manufacturing who, unlike the generators, are already named defendants.

(3) To obviate potential litigation, the large generators should agree to do a complete cleanup, submit a proposal which commits the generators to actually do the groundwater, soil and remedial work for a total cost figure. Such figure, judging

from the Canonie proposal, 1/ would be at least (roughly) twelve million dollars. We, therefore, would not be willing to negotiate a full release, assuming such a cleanup proposal met with EPA approval, for less than $12 million, and with the generators themselves doing the actual cleanup. Unless such a proposal is submitted and approved, the government will proceed with its own feasibility study.

(4) Since it appears that the high group is not proposing to do the cleanup themselves, our counter-offer to them would essentially be an early (i.e., before EPA completes its investigation to determine the actual extent of groundwater contamination and concomitant cleanup cost) "cash out" on the same basis as our offer to the small generators. In other words, if the government does the cleanup, and if the generators wish to settle with us now, we will have to use a total cleanup estimate figure which contains a large enough margin for error to at least provide for the potential cost of remedying groundwater contamination which is, by far, the largest potential portion of the cleanup. Other elements which potentially may affect the total, ultimate cleanup cost figure, and, therefore, must be factored in are:

(A) inflation,
(B) start-up and shutdown costs during cleanup operations,
(C) unforeseen costs of handling and appropriately disposing of substances at the site which may not previously have been identified. In addition to these costs, any early buy out total cleanup cost estimate would have to factor in certain "risk" elements for the government, as it would be the government who assumes responsibility for the cleanup. Included among these risk elements:

(1) in proceeding with litigation against non-settling parties the government may end up with a judgement which does not cover the entire actual cost of cleanup.

1/ Canonie indicates that it would remove the drums and one foot of soil, put down a clay cap and provide monitoring to detect possible groundwater contamination. Thus, the proposal does not indicate what actions, if any, would be taken to remedy sub-surface and off-site contamination. Also, substantially more than one foot of soil may be required to be removed.

(2) since we do not now know the extent of groundwater contamination remedial costs may greatly exceed any cost figures discussed thus far.

(3) we may not, in fact, have good claims against certain generators that we ultimately end up suing and thus their previously assumed proportionate share of the total cleanup cost would have to be covered.

It appears that we at least have a reasonable justification for a $26 million total cleanup cost figure. It would seem appropriate then to negotiate with the generators at this stage on the basis of a $30 million cost figure; i.e., $26 million rounded off to $30 million with the extra four million providing roughly for presently unaccountable but reasonably foreseeable additional costs associated with an ultimate cleanup.

(5) If the generators will not commit to doing a total cleanup (including groundwater remedial work) themselves, then we should take a firm stance that we would be willing to negotiate either only if the large generators wish to "cash out" now, for full release, upon the same basis as the small generators, i.e., based on a $30 million cost figure, each generator paying its proportionate share relative to amount of waste deposited. In return, we would enter into covenants not to sue 2/ which would allow settling generators to sue non-settling generators if they so desire, but including a provision primarily to protect small settling generators, that the total amount of the judgment the government ultimately gets would be reduced by the amount for which the settling generator settled with us. In this way, a generator who settles with us need not fear a suit for a larger contribution by some other (presumably large) generator.

It is recommended that we respond on June 29th to the Bayh group and to their request that we hold up our feasibility study by saying that we will proceed therewith unless and until at least a substantial number of the Bayh group generators settle with us along the lines set forth above. This is necessary to protect the government's interests for the following reasons:

2/ We are in the process of drafting a basic covenant not to sue to be submitted to you for approval with a recommendation that we present it to the large generators for review on June 29th.

(A) Since we obviously will not be able to settle with all potentially responsible parties we will end up suing someone and will need the feasibility study to prove our case and to demonstrate to the Court what relief we desire as appropriate and adequate;

(B) Thus, we need to complete the study to get an actual cleanup cost figure in order to prepare for trial against defendants and all non-settling generators we decide to sue.

Within the next several days we anticipate submitting to you a number of Seymour-related memoranda including a proposal for a written request, over your signature, to EPA, for priority in laboratory time, etc., so that the feasibility study can be expedited. Subsequent memoranda will provide you with information updating our case plan (depositions, meetings, etc.) for the next several months and will address details of recommended provisions to be included in settlement documents to be offered to small and large generators. We will also be providing you, very shortly, with a memorandum setting forth a formal request (I have already submitted a request to you in the form of a reply to your May 19, 1982 memorandum to all staff attorneys as to need for additional resources for litigation support) for additional personnel, equipment and other resources which we will need to assist in completing the settlement negotiation phase. Of course, once that phase is completed and we have a better idea of the identities and number of additional defendants we will have to litigate against, we will be in a position to detail for you our needs for litigation support personnel necessary to proceed with the litigation phase of the case.

The instant memorandum was prepared with considerable haste in order to get something to you in writing before you left the office for the remainder of the week, and again, this was prepared without benefit of other supporting information we have requested from EPA. We hope the instant memorandum at least serves to indicate to you our recommendations as to our further settlement negotiations with the generators with specific reference to our upcoming second negotiation session with the Bayh group on June 29th.

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WP 125/10/1

October 1, 1982

The Honorable Anne M. Gorsuch
Administrator, United States
  Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Re: Seymour Hazardous Waste Site, Seymour, Indiana

Dear Ms. Gorsuch:

I am writing to you with respect to the Seymour Hazardous Waste Site in Seymour, Indiana, and in particular in regard to the imminent settlement by the federal government with a number of corporations alleged to be the largest contributors of substances that were shipped to the Seymour site. I have been authorized by the companies named in the margin,*/ all of whom are alleged contributors of very small amounts of substances to the Seymour site, to protest the government's entering into this settlement. On the basis of information provided to us by the government attorneys assigned to this case, we are convinced that the execution of this settlement document will gravely prejudice the small generators identified in the margin, and hundreds of other companies that the federal government has named as potentially responsible parties under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"). (For convenience, I will refer hereafter to the two groups of companies as the settling or large generators on the one hand, and small generators on the other hand.)

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*/ American Latex Corporation; Corning Glass Works; Eaton Corporation; Ferro Corporation; Magnavox Government and Industrial Electronics Company; Owens-Corning Fiberglas Corporation; SCA Services, Inc.; The Sherwin-Williams Company; Textron, Inc.; and Wallace Murray Corporation. Counsel for other firms have expressed their desire to join in the letter but have not had enough time to receive authorization from their management to do so. Other companies will be communicating directly with you.

As we understand the proposed settlement with the large generators, this group would enter into a contractual arrangement with a reputable consulting firm to conduct the surface cleanup at the Seymour site, in exchange for either a covenant not to sue, or a consent decree releasing them from responsibility, for any cleanup costs (including costs related to later-discovered groundwater and soil problems). Our understanding is that, although the original Justice Department estimate for surface cleanup was $15 million, the large generators have received a firm bid from a responsible waste management company to carry out complete surface cleanup for about $7.5 million. Also, based on earlier meetings with EPA and the Justice Department officials, all the generators were led to believe that the "worst case" cost for all the remedial actions necessary at the Seymour site -- including actions with respect to soil and groundwater pollution -- would total $30 million, and that this figure was based on assumed figures of $15 million for surface cleanup and $15 million for soil and groundwater cleanup. (Clearly, one effect of the proposed settlement would be to require reduction in the government's estimate of total cleanup costs from $30 million to $22.5 million.)

It appears that under the proposed settlement with the large generators, those corporations (representing approximately fifty percent of the waste allegedly sent to the Seymour site) would be provided a total release from all liabilities in return for payment of the $7.5 million surface cleanup cost. We understand the government's position to be that, rather than using Superfund monies to finance any portion of the remaining cleanup which may be necessary, the government intends to ask the remaining group of small generators -- allegedly representing the other fifty percent of the waste contributed to Seymour -- to finance what the government estimates will be a $15 million remedial effort. Even according to the government attorneys assigned to this case, it appears that the small generators, who probably had far less opportunity to know of any of the activities being conducted at the Seymour Recycling Corporation's site, will each pay -- on the basis of alleged percentages of waste contributed to that site -- twice that which the largest generators will pay on a percentage basis. One view of the proposed settlement is that it will immediately increase the liability of the non-settling generators (under the government's view, at least) by several millions of dollars.

All the small generators noted on page one agree that a paramount principle in this matter is to avoid impeding a voluntary surface cleanup of the Seymour site. The small generators themselves would be willing to join in such a voluntary effort if it were possible to do so on an equitable basis. Both the government and the large generators, however, have excluded the small generators from this participation, because -- according to representatives of both groups -- the federal government fears that if too many parties participate in the obviously favorable terms which underlie the large generators' settlement, there will be an insufficient "pool of liability" against which the government may claim responsibility for the remaining cleanup efforts. (The mere assertion of this as a reason for excluding the small generators underscores the irresponsibility of entering into the proposed settlement.) The small generators complain about the proposed settlement not because other companies are achieving a termination of this matter through routes other than litigation, but only because the proposed settlement will immediately and severely affect the rights of the small generators. They are being denied a right to enter into a favorable settlement for the perverse reason that they contributed too little to Seymour.*/

Not true

Where did this come from?

There is a danger that the effect of entering into the proposed settlement will transcend the Seymour case, and will subvert constructive efforts by generators' committees in other CERCLA cases. If it is possible for small groups of generators to form alliances and receive special favors from the federal government, it will be difficult, if not impossible, for large groups of generators to organize voluntary cleanup efforts. Generators' committees are nourished by trust, and the Seymour agreement will destroy that trust.

We believe that there are a number of potential solutions to this problem. One is to allow every generator to pay a sum representative of his alleged percentage share of the overall exposure at Seymour (based on no more than a $22.5 million cleanup figure, of course). Another possibility is to allow all generators a short period of time to determine whether to join a group that would clean up the surface by entering into a contract with its own waste management firm or by contributing a sum to the government that would cover the cost of surface cleanup. (This latter approach is essentially what occurred in the recent Chem-Dyne settlement.) A third option would be to allow the small generators to join in the group of large generators and contribute to the cleanup cause on the same percentage basis. No doubt there are other options that could be developed around the twin principles of securing immediate surface cleanup of the Seymour site and also providing equitable opportunities for settlement to each generator that wishes to do so.

---

*/ The largest generator, and apparent leader of the group with whom the government seems so eager to settle, by the government's calculation sent about 64 times as much waste to Seymour as did the largest generator in the group named in the margin on page one.

We would be happy to meet with you, your representatives, and officials of the Justice Department, to discuss this case. (A meeting was scheduled for Friday, September 24, but it was cancelled that morning by a representative of the government.) Our only condition for attending such a meeting would be that the proposed settlement with the large generators would not have been executed.

The small generators believe the execution of the proposed settlement with the large generators does not fall within the broad purview of an act of federal enforcement discretion under either CERCLA or the Resource Conservation and Recovery Act ("RCRA"), the two statutes on which the government has relied in asserting liability against all generators. As such, entering into this settlement constitutes a failure of the agency to perform a duty which is not discretionary, and is therefore cause for suit under Section 7002(a)(2) of RCRA. This letter constitutes notice under Section 7002(c) of RCRA of intention to file suit.

Respectfully yours,

James A. Rogers

James A. Rogers

cc: The Honorable William French Smith
Attorney General
of the United States

Carol E. Dinkins, Esq.
Assistant Attorney General
Land and Natural Resources Division
Department of Justice

Robert M. Perry, Esq.
Associate Administrator for Legal
Enforcement Counsel and General Counsel
United States Environmental
Protection Agency

bcc: Ms. Rita M. Lavelle
✓Gene A. Lucero, Esq.
Stephen D. Ramsey, E
Michael A. Brown, Es
Edward A. Kurent, Es
Charles Goodloe, Esq
Allan J. Topol, Esq.

RECEIVED
CWP 150/10/7

UNION CARBIDE CORPORATION OLD RIDGEBURY ROAD, DANBURY, CT. 06817
LAW DEPARTMENT

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

October 1, 1982

John C. Hammock, Jr., Esq.
Trial Attorney
U.S. Department of Justice
Room 1736
9th Street & Pennsylvania Ave., N.W.
Washington, DC 20530

Re: Seymour Recycling Superfund Claim

Dear Mr. Hammock:

This letter will confirm the substance of the undersigned's telephone discussions with Messrs. Lucero and Kurent on September 30, 1982.

We confirm that Union Carbide hereby withdraws its August 13, 1982 offer to settle the captioned claim by a payment of $30,000.00, computed on the basis of the government's volumetric waste allocation to Union Carbide of 0.1% multiplied by the government's $30 million total clean-up estimate. This action is based upon the understanding that a group of larger generators have contracted with a reputable contractor to clean-up the surface of the site for a fixed price of $7.5 million, thereby effectively reducing the government's surface clean-up estimate from $15 million to $7.5 million. It is our further understanding that the government is considering settling its claims against said larger generators by releasing them from all liability (including subsurface clean-up) respecting the site in return for their contractor's clean-up of the site surface.

Consistent with what has always been an underlying principle in past Superfund claim settlements, Union Carbide hereby confirms its new offer to settle the captioned claim in accordance with the same settlement formula pursuant to which settlements are entered into with all other generators.

In our view, the principle that generators must be treated equally, irrespective of their size, is an essential underpinning of an efficient Superfund settlement policy and procedure. It encourages the formation of generator steering committees capable of conducting orderly and efficient negotiations with the government. Such negotiations, if successful as they have been in the Wade, Bluff Road and Chem-Dyne cases, result in prompt settlements and clean-up actions while conserving the resources of the government, industry and the Superfund itself. We believe that if this principle is abandoned for the purposes of this or any other case, the whole Superfund settlement process could breakdown because such action will communicate a clear message to all Superfund potentially responsible parties that they are on their own in all future cases. The immediate effect of this message will be a refusal of such parties, large or small, to place their trust in a negotiating steering committee. If this occurs, the entire settlement process in multiple potentially responsible party situations could grind to a hault, and litigation rather than negotiation become the general rule in such cases.

In addition to increasing the costs of all concerned, such a result unquestionably would retard the achievement of the overall goal of Superfund - the prompt clean-up of abandoned hazardous waste sites that threaten the public health or the environment.

We look forward to your early response to Union Carbide's new settlement offer.

Very truly yours,

Cornelius C. Smith Jr.

Cornelius C. Smith, Jr.
Chief Environmental Counsel

CCS,Jr./pf

cc: Mitchell E. Burack, Esq.
Fredrick F. Stiehl, Esq.,
Edward H. Kurent, Esq.,
[redacted],
Scott A. Smith, Esq.
Charles Goodloe, Jr., Esq.
Rita M. Lavelle,
Robert S. Perry, Esq.
Michael P. Brown, Esq.
Steven D. Ramsey, Esq.
David F. Zoll, Esq.

Seymour
Weir, Burnet
Biros, Emery
LAVELLE,
LOSIKowski,
et al.

MTG 8/9/82

LaValle: Governor interested in fast action.
Workin
"Can come up with $2 mill"
When? What commitment?
Jan collection date can be gun says gov?

① mill by Jan 1 says Bartlett
Wouldn't be avail til March?

Paul: Should we get 2nd AG offc opinion

State worried about spending all this $

Russ Weir: SP has GW/Soil study $ $350,000 RCRA $
This includes feas study!/

What would $2 mill buy? Staging and set up

IBM wants to hire contr, pay him 7 mill, have US pay the missing 2 mill

Note Bluff Rd settlement → 75% Jack split site into 2 sections.

John: We expect proposal w/ costs from IBM, next week

Note: we don't want to put a cap on their expenditure .. costs are NOT really relevant.

TUES = Tech meeting with Gen people
Wed = Topel call to Hammack

Hamack: on 9/9 we make offer - They have 30 days.

Will we have our determs by then? Will K be completed.

We decide on Δ's for case in 10/9

N.B.: Is State on Board?
call Larry re 9/1 mtg ---

Russ: In order to start exped drum remov He has to bid 9/1! and need decision to fast track next week.

10^{00} AUG 12 is our next mtg together.

Copy 1 of 3
Do not copy

ENFORCEMENT SENSITIVE

CONFIDENTIAL
Prepared for Litigation
and Settlement Discussions

Seymour Recycling Co. Negotiations

Settlement Options:

~~ENFORCEMENT SENSITIVE~~

Option 1:

- Consent Decree providing that Chemical Waste Management, Inc. perform site cleanup.
- Signatories include Indiana, EPA, DOJ, Department of Interior.
- Assurance provided by:
  - primary performance bond
  - public and environmental damage liability insurance
  - secondary $8M performance bond
  - umbrella insurance coverage
- Agreements, with releases, for cash contributions from 24 settling companies.

Option 2:

- Consent Decree with Chemical Waste Management, Inc. and 24 settling companies.
- Signatories include Indiana, EPA, DOJ, Department of Interior.
- Chemical Waste Management, Inc. to perform site cleanup.
- Assurance provided by:
  - performance bond
  - insurance coverage for protection against public harm and environmental impairment.
- 24 companies contingently liable should CWM, performance bond, and insurance all fail.

Dept. of Agriculture -
Bruce Blanchard
343-3891 - Bill
Solicitor's Authority
Garner -
343-2172
Garner to Walker
in a week

Major
coordination
effort
required

Actions to do:
Who to contact:
On trustee problems
When enforcement -
When removal -
When remedial action -

ENFORCEMENT SENSITIVE

Seymour Recycling Co. Negotiations

Topol Group Settlement Issues:

1. Contingent Liability-

Problem: If Chemical Waste Management, Inc. (CWM) cannot finish work, what protection does Government have?

Companies' Proposal: In addition to the present offer of liability insurance and performance bond, the companies are willing to add an umbrella insurance policy and a second performance bond in addition to the CWM coverage.

2. Consent Decree vs Agreement-

Problem: Government wants a Consent Decree; certain of potential settling companies do not.

Rationale: Government position--Given sensitivities of the case (including possible criminal liability of CWM, Sanderson connection, complaints from parties not allowed to participate), Government must show that deal is fair and fully protects the public. Approval and enforcement by Court is some protection as is the contingent liability provision.

Companies Proposal: CWM and Government signatories to a Consent Decree, with Agreements with 24 other settling companies appended. Contingent liability met with a second performance bond and umbrella insurance protection.

Government Proposal: Consent Decree with all 24 companies as well as CWM. CWM to have cleanup responsibility. Contingent liability can be met by additional bond and insurance.

3. Timing-

- Negotiations with Topol led group are dependent on getting clear signal from both sides on:
  --national resources damage release
  --Consent Decree
  --contingent liability

ENFORCEMENT SENSITIVE

4. Risks-

- No immediate agreement will have negative political impact in Indiana. Agreement may be possible by October 15, but with Consent Decree no activity at site until Court enters Decree.

- Environmental risk at site is increasing-delays may result in increased risk to groundwater as well as delays in surface cleanup because of Court or onset of winter.

5. Equitable Arguments-

- Topol group has obtained $7.5M cost estimate for site cleanup from CWM. This is substantially less than Government's estimate of $13.8 M ($11.8M + 20% contingency).

- Topol group required $100K minimum, or proportionate share to participate. Many smaller companies were precluded from participating and feel that the Topol-led group is getting a sweetheart deal.

6. Arguments in Favor of Settling-

- EPA policy encouraging companies to come forward and fund cleanup. In this case, companies did just that. Further, they should get benefit of arranging a better cleanup deal.

- Superfund $ are limited. Indiana and public expects site cleanup (one of largest problem sites in Midwest). Nationally, privately financed cleanup should be encouraged. Settlements of the Seymour type are needed.

- Joint and several liability theory, while available does not ecourage settlements.

- Lawsuits asserting joint and several liability will be fully litigated. Even if Government successful, litigation may be severely protracted. If Government fails, entire enforcement strategy folds until Congress or Courts sort out final solution.

- Current policy of settlement:

  -establishes distinct Reagan policy
  -is viewed favorably by regulated community
  -gets cleanup in short term and reduces need for Superfund tax.

SDR:CLG
2-26S-19

Washington, D.C. 20530

September 13, 1982

Michael Brown, Esquire
Acting Enforcement Counsel/
Deputy General Counsel
Environmental Protection Agency
401 M Street, S.W.
Room 1035 B, EN-329 West Tower
Washington, D.C. 20460

Dear Mike:

Re: United States v. Seymour Recycling

This is a follow-up of my September 3, 1982 letter regarding the litigation/negotiation schedule for the Seymour Case. In reflects the EPA/DOJ decision to extend the dates for the Companies' execution of covenants not to sue and the consent decree until October 5, 1982, and the filing of the amended complaint until October 7, 1982. The first negotiation with the IBM group will be September 16, 1982. I have enclosed a revised schedule.

If you have any questions or comments, please call me.

Sincerely,

Assistant Attorney General
Land and Natural Resources Division

By:

Carol

Carol Lynn Green
Assistant Chief, Environmental Enforcement
Section

Enclosure

cc: Mary Walker, Esquire
Stephen D. Ramsey, Esquire
Charles Goodloe, Esquire
John Hammock, Esquire
Paul Schaeffer, Esquire
Robert Schaefer, Esquire
Larry Kyte, Esquire
Pam Rekar, Esquire
Ed Kurent, Esquire
Mitchell Burack, Esquire
Gene Lucero, Esquire
Frank Biros, Esquire
Sarah Barker, Esquire

SCHEDULE FOR SEYMOUR CASE

(1) Litigation

September 8 -- EPA to forward 106/107 referral

September 17 -- Amended complaint drafted for EPA/DOJ review and memorandum prepared analyzing whom to sue (how many and rationale); and impact of settling with IBM group (on litigation and non-settling parties) (DOJ: Hammock, Schaeffer)

September 22 -- Interrogatories drafted (Hammock, Schaeffer)

September 29 -- Amended complaint and interrogatories finalized (Hammock, Schaeffer)

October 7 -- Amended complaint filed with interrogatories

(2) Pro Rata Generator Settlement (DOJ: Green, Schaeffer, Daniels; EPA: Rekar, Kush, Burack, Carehan)

September 3 -- Covenant not to sue finalized for DOJ/EPA review
-- Conference call with participants to discuss September 9 and 10 meetings

September 8 -- Participants meet for dry run of September 9 and 10 meetings

September 9 -- Meetings with generators
-- State to provide comments on covenant not to sue

September 10 -- Meetings with generators
-- Resolve "what to do with settlement money;" secure OGC opinion if necessary (Lucero)

September 13-15 -- Covenant not to sue and cover letter finalized (monetary amount included), assembled, and readied for mailing (Lucero to send contractor assistance to Chicago; DOJ to provide envelopes, stationery)

September 17 -- Send to generators covenant not to sue reflecting monetary payment and cover letter (date to be advanced if possible)

October 5 -- Deadline for generator execution of covenant not to sue (to avoid inclusion in suit)

(3) IBM Group Settlement (DOJ: Ramsey, Hammock, Goodloe; EPA: Kyte, Biros)

September 3 -- Contact Topal, explain schedule (Green)
-- Draft letter and consent decree for response to IBM group (Hammock, Kyte)

September 13 -- Consent decree finalized and provided to State and IBM group

September 16-17 -- First round of negotiations with IBM group

September 24 -- Second round of negotiations with IBM group

October 5 -- Deadline for generator execution of consent decree (to avoid inclusion in suit)

9-16-82 AM.

Summary of Topol mtg. 1st session

I. Natural Resources -
This could be Deal/Breaker IV

II. They want Release effective immediately not in future. willing to have performance Bond [illegible]

III. Concerned about other Env. Statutes not administered by EPA

IV. worried about a reference "Federal agencies"

V Don't admit Liability clause (although in (whereas clause

VI our lang. in VI and VII too much

VII Many say VIII access to their record would be a deal breaker

VIII Don't want to Release U.S. in Par. XII

IX. In Par. XIII Don't want to defend a lawsuit (Subrogate responsible)

1. Send them an Order
2. allegations about Lawry

X Trouble with our formal contribution

1. When should release become effective

// When do they stand if release only prospective to the future

B.

2. line 8-10 too broad small point

3. wildlife natural resource relief

4. para. before wildlife top of p.12 too limited (groundwater is mentioned not specifically —

5. Last paragraph of X

Perry v. Crow 101 N.E. 756 (1913

9/16/92

SURFACE CLEANUP
GENERATOR NEGOTIATIONS

Notes

Believe from Technical end, close together
one possible dropout from group. Rest in

Chem Waste Ready

Hit substance first hit formal second
(decree v. covenant etc.)

Steve Don't speak for State. They are reviewing

Paragraph IV Start w/ that Par.
IV
1. We say they perform
2. They said pay cash-out

a hybrid compromise
They have good Tech company. Very detailed plan

or Trustee? (Steve Born)

They can get a performance Bond (Chem Waste)
U.S. be Bondholder
$7-10 per $5,000 for performance.
They can get

50 & 10 m insurance

Chem Waste insurance
50 m. Public liability / Property
50 m pollution liability (sudden)
10 m " " (non-sudden)

Conference

TV

Performance Bond. Steve likes.

+ But Per. Bond. does not cover Ground water getting screwed up. Must Finish Work

Chem waste Strictly Liable

U.S. be payee of Bond (

X

1. Assurance

Performance Bond must be broaden

Chem waste liability. not off Hook for disposal at their sites.

EPA must look ~~out~~ at Insurance policies & Bonds to see if covers it

---

Art Reagan:

Physical fact ? could arise as to who screwed something up if people on site doing work.
EPA certifying periodically parts of Cleanup for Bond purposes.

we must talk to Interior solicitors

Topols problems on our X

1. Natural Resources issue

2. ourdraft trying avoid release

3. For in successful completion of
work: Steve: payment & undertaking
Levein:

Maury Zeldman wants out on payment of cost

Companies want Statement Don't admit
Liability

Worry about "Federal law applies"
504 F.2d 400 Kohr v. Allegheny Airline

X A
"Full" dropped because want no implication
satisfy others partially

VI & VII
EPA involvement
Split sampling

VIII Many strongly opposed to.

XI

10/4 R ə (not available 5:30 & 6:00

Issues for Mike Bloom

I. Status of negotiations
[illegible] a. Mei response today
b. tomorrow – Hard to expect!

~~[illegible]~~

[illegible].

II. Concerned we are introducing new equations and variables into negotiations. Point is to define issues, reduce differences and produce agreement.

Once then retreads covered grounds with no agreement on previously decided issues.

my opinion
Admin order is OK. we loose little by it except judges blessing; gives the Agency maximum control.

We could have gotten contingency liability which is most important. Too late now

10/4/82 meeting with Topol group.

Staw: admin. Order acceptable
if: 1. 15 million escrow
2. contingent liability
This is from policy makers over months
long delay negotiations causing

Topol:
Think they are ridiculous
Admin. order; 1/2 way compromise
Topol meets your concerns

Morte: says
Dir. Kiss said 1. order or consent decree
2. Staw said [illegible] same.
[illegible] more this drags on, and more letters to visit gets
S. [illegible] says more on their [illegible] from other generators, more nervous
[illegible] perplexed. These people don't [illegible] ; [illegible] daily [illegible]
They will get back to us.

After meeting Staw says we got best
place we could on it. I agree. He did good
job. In between lines they could read risk.
They were going to high officials in high
visibility case.

U.S. Department of Justice

United States Attorney
Southern District of Indiana

274 United States Courthouse
46 East Ohio Street
Indianapolis, Indiana 46204

317/269-6333
FTS/331-6333

October 4, 1982

Dick Emry, Branch Chief
Office of Legal and
Enforcement Counsel, EN-329
U.S. EPA
401 "M" Street, S.W.
Washington, D.C. 20460

Mitch Burack, Attorney
Office of Legal and
Enforcement Counsel, EN-329
U.S. EPA
401 "M" Street, S.W.
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Larry Kyte, Attorney
EPA, Region V
230 South Dearborn Street
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Kevin Gerahan, Engineer
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Carol Green, Assistant Chief
Environmental Enforcement
Land & Natural Resources Div.
Department of Justice
Washington, D.C. 20530

Paul Schaeffer, Attorney
Environmental Enforcement
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Washington, D.C. 20530

Pam Rekar, Attorney
EPA, Region V
230 South Dearborn Street
Chicago, Illinois 60604

John Hammock, Attorney
Environmental Enforcement
Land & Natural Resources Div.
Washington, D.C. 20530

Re: United States of America v. Seymour Recycling, et al.
Cause No. IP 80-457-C

Dear Conferees:

In accordance with the request made during the conference call, please find enclosed a memo reciting some of the substantive discussions of a September 21, 1982, conference call. Any comments should be submitted to the author.

Very truly yours,

SARAH EVANS BARKER
United States Attorney

Charles Goodloe Jr.

By: Charles Goodloe, Jr.
Assistant United States Attorney

Enclosure

memorandum

DATE: October 4, 19

REPLY TO ATTN OF: Charles Goodloe, Jr.

SUBJECT: Seymour Recycling

TO: File

On September 21, 1982, at approximately 9:40 a.m., a conference call was conducted with the following participants:

Dick Emry, Branch Chief, EPA Headquarters
Carol Green, Assistant Chief, Environmental
    Enforcement, Department of Justice
Mitch Burack, Attorney, EPA Headquarters
Paul Schaeffer, Attorney, Department of Justice
Larry Kyte, Attorney, EPA, Region V
Pamela Rekar, Attorney, EPA, Region V
Kevin Gerahan, Engineer, EPA Headquarters
John Hammock, Attorney, Department of Justice
Charles Goodloe, Jr., Assistant United States Attorney

Carol Green opened the conference by indicating that she had discussed with Pamela Rekar certain matters involving the next mailing and wanted to discuss with members of the team five issues that primarily involved the prorata share contributors. The issues for discussion were:

(a) the matter of additional responsible parties

(b) the reliability of the Intera Study and the affiliation of parent and subsidiary companies

(c) the inclusion or exclusion of tonage figures attributable to companies that are no longer in business or companies that are under the four ton cutoff limit

(d) the processing of a transporter's records and attributing tons to either the transporter or the company which consigned the waste

(e) a resolution of those contributors of waste that sent material to both Chem-Dyne and Seymour.

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

Item (a): In discussing the first issue, it was noted that 19 companies had apparently been omitted from our earlier notice letter and other mailings and the first question to be addressed was whether they should be given a notice letter, and brought into the mailing for the prorata share, which would be attributable to such company. Larry Kyte observed that we are never going to get all of the companies, because of the records that we have to work with, and for other reasons. He thought that we probably could do this at a later time and that we should not deter ourselves from the next mailing. Carol Green disagreed and felt that we should send the notice letter out now and be in a better defensible position with regard to having contacted all known responsible parties. Mitch thought that we needed them because the 19 companies, which were apparently omitted, account for approximately 169 tons of waste and that from a mathematical point of view such companies should be included. Pam was of the opinion that we should go ahead and get out the mailings today; she did not feel that the 19 companies presented such an unmanagable burden as to where a notice letter could not be put in the mail before evening.

After the above discussion, and other discussions, Carol Green assigned Paul Schaeffer and Pam Rekar to work on a letter for the 19 companies. Carol will look over the letter and it will be put out on September 21, 1982.

Item (b): In discussing the second issue (the Intera Study, the reliability of the figures obtained, and the lack of affiliation between parent and subsidiary), Carol noted that the Intera Study did not put together parent and subsidiary companies, and in some cases we did not know the affiliation between parent and subsidiary; accordingly, the question before the group was how to best manage the next mailing (i.e., the covenent and related material which is scheduled to go out September 28, 1982). She observed that we could ask the companies to execute the covenent on behalf of all of the facilities, which company officials knew to be involved or we could send along a list of the companies which the government had determined were involved with Seymour and let the company representatives execute on behalf of all of its affiliates which are shown by virtue of our list. She asked that Pamela Rekar embellish this presentation of options.

Pam indicated that they have the mailing list which is now updated by the inclusion of names and addresses obtained from the meetings of September 9 and 10, 1982. However, she was of the opinion that unless we have some reliable way of tabulating all of the tonage attributable to a particular parent organization, it would be very difficult to reliably go through the list, which we have, of facilities dealing with Seymour Recycling, and the tonage attributable to such facilty, and put together those figures for the various parent organizations.

Charles Goodloe suggested that we have a list of companies with facilities involved and tonages tabulated and that we can ask the companies to execute the covenent on behalf of the parent's entire group of facilities.

Mitch was of the opinion that the data could generate another contributor of waste which is not now on our list; for example: PB&S Chemical was apparently a transporter. He observed that PB&S is a top ten contributor without any shipping companies indicated. He thought that if we ever obtained a list of the companies which consigned material to PB&S for shipment to Seymour, that we might come up with a major contributor of waste which is not now known.

Larry Kyte indicated that he thought that we had to assume some risk and go with a figure that has some reasonable reliability. He thought that we might never nail down the figures to an absolute mathematical certainty. Charles Goodloe agreed with Larry Kyte that we would have to assume some risks and that there would come a time when we would have to cut off the search for additional companies. The question was raised as to whether the number of companies that may be unknown to us at this stage in the litigation was of enough significance for us to be concerned about it. Mitch was uncertain as to whether we know enough, because of the unknowns in the transportation company files, to really make a reliable assumption that we know all of the major contributors.

Carol Green said that she was inclined to agree with Larry and Charles and that we assume some risks that we have all of the major contributors of waste to the site.

There was some further discussion with regard to what would be in the package sent to the companies on the 28th; Larry was of the opinion that we should send out the list of all contributors known, with the package, so that the parent organizations could identify any subsidiary or other affiliate on whose behalf it would be executing the covenent. Carol Green indicated that we would not send the list of all contributors in the packet.

Pam indicated that there were some companies which were earlier thought to be contributors of waste that Intera had indicated as "no waste shipped."

Charles indicated that we had earlier talked about sending the packet of material to all facilities involved; and, we should only send one packet to a company with multiple facilities, where we are certain of the affiliation and have had prior contact with that company.

Pam was of the opinion that we did not want to create disparate treatment by sending some companies only one packet of material and others multiple packets.

Larry suggested that for IBM, for example, we could send out three packets one for Boulder, one for Lexington, and one for Greencastle.

After further discussion on the matter, it was determined that we would send out one packet of material to those companies' representatives who are known to us and a tonage figure would be attributed to the company for all facilities known to be a part of a parent organization. For those where no affiliation with a parent organization was known, the shipping plant would be the recipient of the covenent material.

There was some discussion as to how the covenent should be executed; the discussion centered on whether a company should be asked to execute on behalf of all of its known facilities, or on behalf of all the facilities which been indentified, and were listed for a company. There was no clear resolution of this matter after the discussion, but, it seems that we will want to pin the company to all known facilities, which are identified, with attributable tonages. If a company desires to add additional facilities which are not indentified, and for which no tonage was attributed, such would have to be indicated pretty clearly on the documents, before we would accept it, per Carol Green's thinking on this matter.

Item (c): The next matter was the inclusion or exclusion of tons in our list of total tons for all companies where it is known that some companies have ceased doing business or such companies are below the four ton cut off limit. Carol indicated that the decision had already been made to drop all companies below four tons from our list. Any tonage attributable to such companies would be absorbed by the remaining responsible companies.

Charles indicated to Carol that our earlier discussion with the companies had not taken this matter into consideration either orally, or in writing. Larry Kyte corrected this statement by indicating that during the early meetings, companies were told that they would have to absorb the

Chem-Dyne and other Kovacs' companies' shares. There was general agreement that this had been discussed, but it was also pretty clear that most of the companies would be expecting a tonage figure which was attributable to that company and which could be substantiated by invoices or other documents executed between the shipping company and Recycling.

Mitch indicated that the basic concepts were clear; we would divide up the tonage attributable to any defunct company and those companies which are below the four ton cut off limit, and aportion such tonage to the remaining responsible companies. The mathematics will be handled by Pam and Mitch.

Item (d): The matter of how to handle the transporter and generator, to avoid double billing for tonage was discussed. With regard to the transporters, Carol indicated that she did not want a problem with double counting and for that reason the mathematics of the tonage attributable to a company and to a transporter should be worked out. This will be handled by EPA Region V. The transporter will stay in for a prorata share, but the tonage figure attributable to the transporter will be shifted to the consigning company and will only be counted once.

There was some lengthy discussion with regard to how many transporters were involved and how much of a problem it would be to sort out such shipments. It was pointed out that many such transporting companies are now defunct. It was further pointed out that many such transporting companies had little or no documentation to show the consigning company for which waste was hauled. It was decided that Charles Goodloe would look over the list, identify the transporters, from the list, and would call such transporters and try to make a determination as to whether such waste could be traced to a shipping company.

Item (e): With regard to the Chem-Dyne waste, Carol Green indicated that the matter of double counting or double billing for Chem-Dyne waste was a serious problem and would have to be dealt with before the mailing on September 28, 1982. She asked that Pam Rekar give a further embellishment on the problems concerned with that issue. Pam indicated that Larry Kyte's earlier tabulation of 20,000 tons attributable to Chem-Dyne could not all be traced through to a shipping company. Approximately 10,000 tons of this material could be traced through to a shipping company and of those shipping companies a decision would have to be made as to whether that company had been previously asked to, and had in fact, settled for the same material in the Chem-Dyne settlement.

Pam went on to state that Barry Sandals has two computer runs which are six inches thick, each, which have shipments consigned to Chem-Dyne. It is believed that some of these shipments did go to Seymour Recycling. It is further believed that some reconciliation can be made by examining the computer runs which Barry has, and checking Chem-Dyne documents against Seymour documents at Chicago.

Pam asked whether Betti Daniels, (paralegal, Main Justice) could be used to do some of the reconciliation work between Chem-Dyne and Seymour. Carol Green agreed that this could be done by a paralegal and asked that John Hammock supervise Betti Daniels in checking the computer runs which Barry Sandals has available. John Hammock and Pam Rekar are to work on the sorting out of the Chem-Dyne shipments to make sure that there is no double accountabilty requested. Larry Kyte indicated that the state reports which are available from approximately 1978 forward should provide a creditable reference for accomplishing this task.

This concluded the discussions on the five items which Carol Green had on her list. Dick Emry was of the opinion that a memo should be created on what has been discussed during the course of the conference call because such would be helpful to anyone who had to reconstruct the events that lead to some of the decisions which were made today. It was decided that Charles Goodloe would prepare a memo and circulate it for comments.

John Hammock asked whether anyone had any experience with bonds running to the United States. He was told that he should look at 40 U.S.C. §270 which deals with Miller Act bonds. It is recognized that the committee of 25, which may work out an agreement with the United States for the clean up of Seymour Recycling, may not actually be working on a government project, but, such bond statutes may provide the framework for the information he needs.

That concluded the conference call; it broke up at approximately 11:30 a.m. Indianapolis time.

Ex-Cell-O Corporation

Executive Offices
2855 Coolidge • Troy, Michigan 48084 • 313/649-1000

Law Department

November 8, 1982
WEV 82 581

RECEIVED
ASSISTANT ATTORNEY
GENERAL'S OFFICE
NOV 9 9 25 AM '82
LAND AND NATURAL
RESOURCES DIVISION
DEPARTMENT OF
JUSTICE

Assistant Attorney General
Land and Natural Resources
Division
Department of Justice
10th and Pennsylvania Ave., N.W.
Washington, D.C. 20530

Re: United States v. Seymour Recycling Corporation, et al
DoJ Reference No.: 62-26S-19

United States v. Seymour Recycling Corporation, et al
Civil Action No.: IP-80-457-C

Dear Ms. Walker:

This letter will constitute the comments of Ex-Cell-O Corporation ("Ex-Cell-O") to the proposed Consent Order described at page 49107 of the Federal Register - October 29, 1982.

Ex-Cell-O Corporation is the parent company of McCord Corporation ("McCord"). McCord's now closed Washington, Indiana plant has been identified by EPA as a generator of waste sent to the Seymour Recycling facility.

Since the announcement of the proposed settlement embodied in the Consent Order, McCord has been advised by the Department of Justice that it may "cash out" of its obligation under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Resource Conservation and Recovery Act ("RCRA") and the Clean Water Act by payment of a certain amount of money in exchange for a Covenant Not to Sue from the federal, state and local governmental bodies involved.

While the proposed Consent Order does not appear to be objectionable as a matter of law, the effect which it has had on the "non-negotiable" settlement offer made to McCord and other small generators is substantial. This is because EPA and the Department have computed McCord's share of the cleanup costs on an unrealistic basis. EPA's first estimate of the total cost of a site cleanup was $30,000,000. However, those companies contained in Exhibit A to the proposed Order (who reportedly represent approximately 50% of the waste shipped to Seymour during its years of operation) were apparently able to arrange for a surface cleanup of the site for $7.7 million, approximately one-half of the surface clean up cost originally estimated by EPA. Unfortunately, rather than reduce the basis upon which its settlement offer to the smaller generators would be based, the Department has arbitrarily computed each generator's share of the original $30,000,000. The net result is that generators representing 50% of the waste are being given a total Covenant Not to Sue in exchange for bearing 34% of the cost of clean up. In other words, the share of the generators of half of the waste is being computed on a different (and lower) cost basis than the non-settling generators.

The effect of the Consent Order is especially troublesome in light of the fact that McCord Corporation was first notified of its involvement in Seymour at the end of July 1982, approximately two years after initial negotiations between groups of generators and the government commenced. McCord was never offered an opportunity to participate in these negotiations and, in fact, during Generators' meetings held on September 9 and 10, 1982, McCord was told that any settlement proffered by the government would be "non-negotiable", but that such settlement would be on the same basis as any settlement reached with large generators. Obviously, this promise on the part of the Department of Justice has not been kept. When McCord became aware of the settlement, it advised the Department that it was willing to participate on the same basis as the settling generators.

For the foregoing reasons, McCord Corporation and Ex-Cell-O have serious reservations about the Consent Order. It is our view that, at the very least, the share of cleanup costs imposed on the settling generators should be on the same basis as any settlement proposal offered to other generators who are not beneficiaries of the settlement embodied in the Consent Order.

Respectfully submitted,

Walter E. Vashak, Jr.
Senior Corporate Counsel

/gp

cc: Office of the United States Attorney
274 U.S. Courthouse
46 East Ohio Street
Indianapolis, Indiana 46204

Environmental Protection Agency
Region V
230 South Dearborn Street
Chicago, Illinois 60604

Clerk of the Court
United States District Court
for the Southern District of Indiana
Room 105
46 East Ohio Street
Indianapolis, Indiana 46204

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

Kevin

SEP 7 1982

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Comments on Technical Proposal for Removal and Disposal of Hazardous Wastes from Seymour Site

FROM: FJB F. J. Biros, Acting Director,
Technical Division, OWPE WH-527

TO: Beverly Kush, Seymour OSC,
Air and Waste Management Division, Region 5

OWPE has examined the subject draft technical proposal discussed with the Seymour generator group in Chicago on September 1, 1982. The following comments should be transmitted to the generator group and satisfactorily addressed in the next draft of the technical proposal. As we discussed in your office, and with the qualifications expressed herein, we believe the technical proposal for the Seymour site surface cleanup is generally acceptable.

- Runoff-The technical proposal should include a final grading plan showing where runoff will be collected when the site is finally backfilled and graded. Collection point(s) and other grading plan specifications should be acceptable to EPA and the ISBH.
- Soil excavation-IBM (Bob Morris) indicated that the site excavation plan would be modified based on an updated aerial photograph of the facility. Since this may substantially affect the site excavation plans, the new information should be examined carefully.
- Wastewater treatment-Maintenance (as opposed to operation) of the present wastewater collection and treatment facility should be provided during the on site cleanup operations by CWM. In addition, pooled liquids presenting during the CWM on site cleanup operations should be collected and disposed at generator expense.
- "Visibly contaminated" soil (other than that under tanks and drums), especially soil contaminated by CWM during drum and bulk tank removal operations should be removed and disposed by CWM. The inclusion of this activity in the technical proposal draft should be verified.

- Formal reporting should be part of the technical proposal. Monthly summary reports may be adequate if they include reference to detailed, accessible file data relating to analysis of the hazardous wastes, volumes of wastes removed, disposal points, routings, and other appropriate information.
- On-scene coordination by the Agencies (EPA/Indiana) should be expressly referenced in the technical proposal including an indication of the OSC's authority to access data and obtain split samples. Planned major events should be communicated to the EPA/Indiana OSC in advance.
- A community relations plan should be formulated and included in the technical proposal. This should include, at a minimum, a public meeting with local residents and groups in advance of operations to inform them of surface removal plans, contingency plans, and a site contact and telephone number to receive citizen's complaints during the term of the CWM project.

The ISBH expressed many of these concerns as well as others in which we concur. As we understand, the ISBH would provide certain information to the generator technical group including:

- Present monitoring parameters employed by the on-site wastewater treatment facility.
- Source of the soil used for the construction of the containment berm on site.
- Air monitoring parameters and requirements that may be of concern to the Indiana Air Pollution Control Agency.
- Information concerning contingency plans for on-site emergencies and traffic routing.

There are other areas of concern which we will recommend be addressed in the non-technical portion of the Consent Document including measures to ensure satisfactory performance. These measures may include performance bond mechanisms or liability releases that do not become effective until satisfactory project completion and certification by EPA and Indiana. In addition, the Consent Document should define the completion date for the project based on the technical proposal schedule.

As you know, the Seymour negotiations have been placed on a fast track. Please ensure that the information promised by the ISBH is received in a timely fashion and communicated to IBM and CWM. We appreciate your efforts in transmitting the Agencies' comments to CWM and IBM expeditiously.

cc: Gene Lucero
    Kevin Garrahan

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 7 1982

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Technical Proposal for the Removal and Disposal of Hazardous Wastes from the Seymour Site.

FROM: FJB F. J. Biros, Acting Director, Technical Division
Office of Waste Programs Enforcement, WH-527

THRU: Gene A. Lucero, Acting Director Gme
Office of Waste Programs Enforcement

TO: Stephen D. Ramsey, Chief
Environmental Enforcement Section, Department of Justice

The following is a summary of the technical proposal for the Seymour site surface cleanup proferred by Chemical Waste Management, Inc. (CWM) and the twenty five major generators led by IBM. The summary is based on the Sept. 1, 1982 draft technical document and a meeting of principals including the State of Indiana (ISBH) in Chicago, Sept. 1, 1982.

Elements of Surface Cleanup:

- Site preparation for entry and exit of vehicles and equipment to be utilized during performance of work at the site. This includes crushed stone road construction, grading, and establishment of drum crushing center.
- Sealing and abandonment of on-site wells and all underground piping leaving or entering the site.
- Site preparation for placement of decontamination units, mobile laboratories, and office trailers (see attached Figure).
- Characterization and batch analysis of all drummed waste materials to ensure compliance with DOT and RCRA regulations.
- Repackaging and preparation of wastes for transport and disposal.
- Loading, removal, and transport of all characterized and packaged wastes. Disposal will be in CWM RCRA permitted disposal facilities. CWM will obtain all necessary generator ID numbers, transporter and road use permits to complete the project.

- Characterization and batch analysis of all hazardous wastes currently in 98 bulk tanks on site to ensure compliance with DOT and RCRA regulations.
- Loading, removal, transport, and disposal of the 98 bulk tanks, including hazardous waste contents, currently on site.
- Loading, removal, transport, and disposal of all remaining debris and wastes currently on site including lab chemicals truck bodies, mobile offices, piping and other loose and movable debris within the fenced perimeter of the site. This does not include permanent structures or permanently fixed equipment.
- Excavation, characterization, packing and removal of soil under bulk tanks and drums to 1 foot below grade. Excavation, characterization, packaging, and removal of visibly contaminated soil to 1 foot below grade. Areas to be excavated represent approximately 72% of the total surface area of 11.3 acres within the fence perimeter. Any localized spills occuring during on site operations will be removed. Soil removal does not include removal of buried wastes.
- Treatment (Not on site) and/or disposal of all hazardous waste materials by methods specified and/or required by RCRA and TSCA regulations.
- Regrading of site including backfilling of removed soils to provide a single collection point for stormwater collection and to match original site contours.
- Decommission and removal of all on site equipment, trailers, and laboratories provided and installed by CWM during performance of the project.

Schedule:

CWM projects that the proposed on site activity summarized above can be accomplished in 50 weeks on an 8 hour/day, 5 day/week basis. All activity will be perfomed only during daylight hours. Weekend operations will be performed only after notice to EPA and Indiana officials. The completion schedule should be clearly defined in the Consent Document now under draft at DOJ.

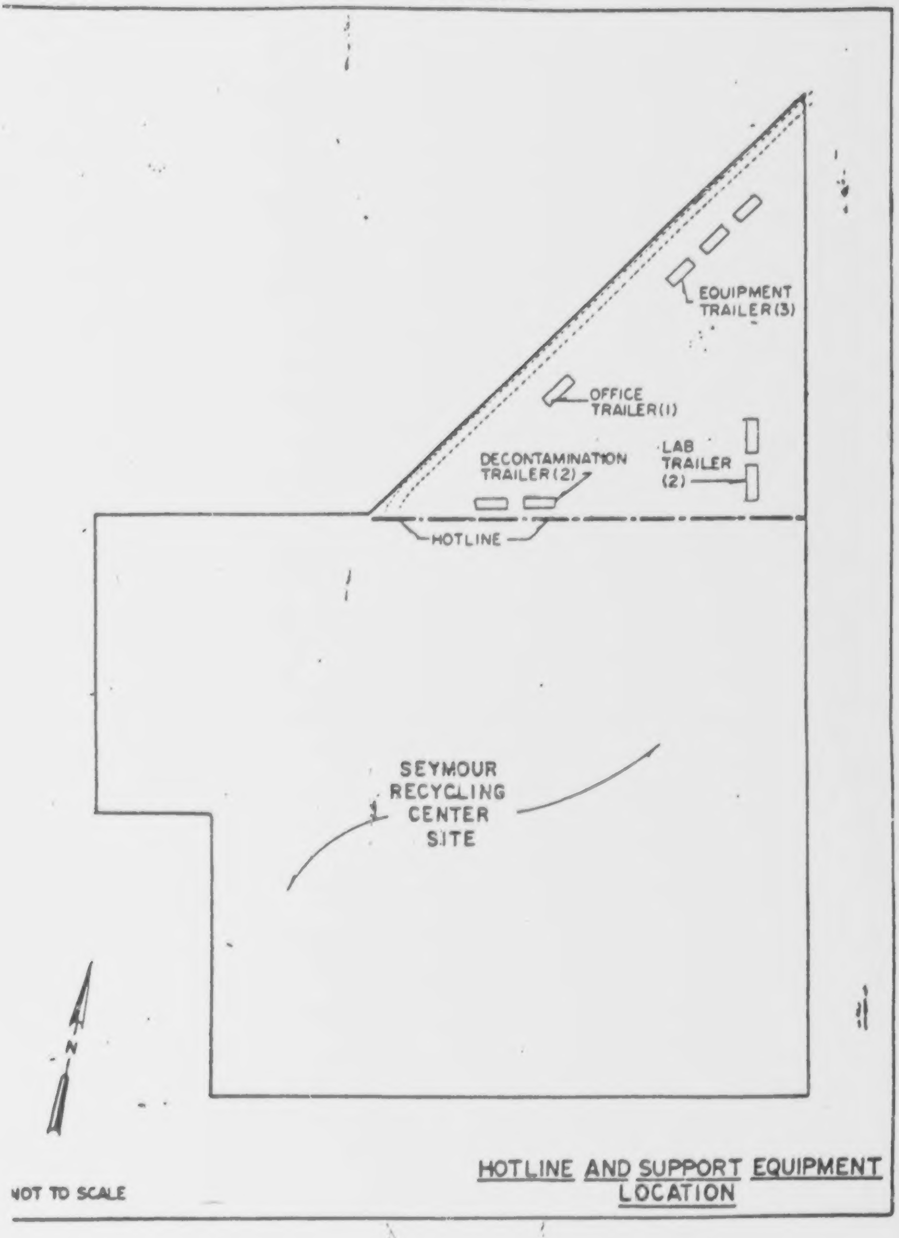
EPA/Indiana Oversight of On Site Operations:

The Agencies would seek, at a minimum, the authority to maintain an On-Scene Coordinator (OSC) and facility on site during the term of the cleanup to provide oversight of CWM operations. Oversight authority will include access to CWM information developed during the project such as results of characterization and special waste analysis tests, routes and destination of disposed hazardous wastes, and authority to obtain split samples. In addition, the terms of any Consent Document should not preclude the authority of the OSC to halt operations in the event of circumstances which may present an imminent and substantial endangerment to health or the environment. The technical principals (IBM-CWM) accepted these concepts. The presence and oversight functions are expressed rudimentarily in the covenant documents forwarded by Alan Topol on August 27, 1982. The intervention authority should be included in the Consent Document now under draft by DOJ. Certainly, at a minimum, the Document should not limit EPA authority to seek injunctive relief in the event an imminent and substantial endangerment is presented during on site operations by CWM.

Follow-up:

Beverly Kush, the Region V OSC, is coordinating comments from EPA and ISBH for transmittal to the generator technical group by Wednesday, Sept. 8, 1982. A copy of EPA-HQ comments are attached. Although no specific date was provided, the generator technical group indicated that it can revise the technical proposal immediately. The EPA/DOJ/Indiana Topol negotiating group should designate a technical coordinator with the IBM/CWM group to ensure expeditious communications during the negotiations period.

EXHIBIT I


EQUIPMENT TRAILER(3)
OFFICE TRAILER(1)
LAB TRAILER (2)
DECONTAMINATION TRAILER(2)
HOTLINE
SEYMOUR RECYCLING CENTER SITE
N
NOT TO SCALE

HOTLINE AND SUPPORT EQUIPMENT LOCATION

[illegible]

November 8, 1982

BY MESSENGER

Mary L. Walker, Esq.
Deputy Assistant Attorney General
Land and Natural Resources Division
United States Department of Justice
10th and Constitution Avenue, N.W.
Room 2143
Washington, D. C. 20530

Re: United States v. Seymour Recycling Corporation, et al., DOJ Reference No. 62-26S-19

Dear Ms. Walker:

The purpose of this letter is to comment on the proposed Consent Decree in United States v. Seymour Recycling Corporation et al., Civil Action No. IP-80-457-C, notice of which proposed Consent Decree was published in the Federal Register on Friday, October 29, 1982, announcing an abbreviated comment period of only 10 days.*/ These comments are filed on behalf of Sarkes Tarzian, Inc., one of the companies to whom the Government has sent a letter dated October 28, 1982, proposing a "buy-out" offer in connection with the Seymour site.**/

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*/ On Friday, November 5, 1982, we filed a request for extension of the comment period (and of a related hearing before Judge Dillin of the United States District Court for the Southern District of Indiana scheduled for Wednesday morning, November 10, 1982) but have been informed that an extension has not been granted.

**/ As explained in our request for extension of the comment period as well as in other previous filings by the Company, although Sarkes Tarzian, Inc.'s involvement with Seymour was so limited that it should not be considered responsible for any of the difficulties at the Seymour site, the Company has cooperated fully with the Government in its efforts to expedite the cleanup of the Seymour site. The only allegedly "hazardous" materials the Company provided to Seymour involved a relatively (continued)

As detailed below, we submit that the proposed Consent Decree is manifestly unfair to Sarkes Tarzian, Inc. and to literally hundreds of other companies that have been offered settlement terms that are much less favorable than those offered the 24 companies participating in the proposed Consent Decree. Accordingly, we submit that the proposed Consent Decree should be modified to permit equal or equivalent opportunities for settlement for all other companies involved.

Before detailing this view, we must reiterate the unfairness of the 10-day comment period, particularly given the Government's scheduling of the hearing before Judge Dillin the morning of November 10, 1982. The proposed Consent Decree raises a variety of legal, factual and equity issues, many of which cannot be fully evaluated in such a brief period. Accordingly, we have focused on the "fairness" issues raised by the proposed Consent Decree, but reserve our right to respond further on this and other matters if an extension of the comment period is granted or as other opportunities for comment are available.

Let us now turn to our comments on the proposed Consent Decree.

The standards for assessing the proposed Consent Decree are reflected in the Department's regulations requiring an opportunity for public comment on proposed Consent Decree judgments in environmental cases, 28 C.F.R. § 50.7. Pursuant to these regulations, the Department reserves the

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(footnote continued)

small amount of trichloroethylene (a net of 20 tons) that its former Semiconductor Division (sold to a completely unrelated company effective July 1, 1977) sold or provided for reprocessing to Seymour Manufacturing Company from late 1973 through September 1976. These transactions all involved sales or reprocessing agreements with Seymour (which made all arrangements for the pickup and shipment of the trichloroethylene), not payments to Seymour simply to dispose of "waste" trichloroethylene. Complete information on these transactions with Seymour, including copies of available records, were provided to the United States Attorney in February 1981, promptly after receiving an inquiry from her office in December 1980.

right to withdraw or withhold its consent to the proposed judgment "if the comments, views and allegations concerning the judgment disclose facts or considerations which indicate that the proposed judgment is inappropriate, improper or inadequate." 28 C.F.R. § 50.7(b). Thus, the Department must withdraw or withhold its consent to the Seymour proposed Consent Decree if the facts or considerations indicate that the proposed judgment would be "inappropriate, improper or inadequate."

It seems clear from what we have learned that the proposed Consent Decree would be very unfair to other companies that have been offered "buy-out" arrangements much less generous than those given the 24 companies participating in the proposed Consent Decree. Although the Government has not provided information on the proportion of materials for which these 24 settling companies are considered "responsible," it appears they are responsible for at least 50 percent of the total material sent to Seymour.*/ However, pursuant to the proposed Consent Decree these 24 companies would be required to pay only $7.8 million of the Government's estimated total cleanup cost of $30 million. By contrast, the pro rata amounts demanded of the remaining approximately 325 companies involved apparently total approximately $15 million. In short, if the proposed Consent Decree were approved, 24 companies responsible for more than half the material shipped to Seymour would pay only $7.8 million, while the Government would demand of the remaining approximately 325 companies a total of almost twice this amount. This result is grossly unfair to the companies that were not within the group of 24 "chosen" companies.

This result is even more extraordinary given the representations made by the Government in the proposed Consent Decree. Section XIII of the proposed Consent Decree states that the Government believes that the collective and individual payments by the 24 companies involved represent "a fair and equitable apportionment" of these companies' "responsibilities" for the matters covered by the proposed Consent Decree. The immediately preceding Section XII states that the "parties contemplate and intend that the United States or the State will assert claims for cost recovery, injunctive or other relief against entities which are not parties to this consent decree to enable the United States and the State to recover the complete relief to which they may be entitled at law or equity." Section XIII further provides that in any subsequent proceedings the Government intends to protect the 24 companies "from being required to pay any amounts for covered matters in excess of" the $7.8 million to be paid. In short, the proposed Consent Decree represents that the $7.8 million to be paid by these 24 "chosen" companies is "fair and equitable," that this $7.8 million is the full amount that these companies will be required to pay, but that the Government will proceed against others not party to the Consent Decree to obtain the "complete relief to which [the Government] may be entitled at law or equity."

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*/ We have filed a Freedom of Information Act request for information on the amounts for these 24 companies and other companies to whom the Government has sent "buy-out" proposals, which information is, of course, essential to evaluate the appropriateness and fairness of the proposed Consent Decree.

However, it cannot be "fair and equitable" for the Government to settle with 24 companies responsible for more than 50 percent of the total for $7.8 million, or half of the pro rata amount of $15 million, while demanding approximately $15 million from the remaining companies accounting for less than 50 percent of the total. Put another way, if settlement of $7.8 million is "a fair and equitable apportionment" of the responsibilities of these 24 companies, how can Government claims totaling $15 million be "fair and equitable" for the 325 companies accounting for a smaller overall volume of material sent to the Seymour site?

The preamble of the proposed Consent Decree (page 4) refers to the "public interest" in "expedit[ing] the abatement of a portion of the imminent and substantial endangerment which is alleged to or may be presented at the Seymour site," and one argument the Government will surely make in defending the proposed Consent Decree is the "public interest" in prompt surface cleanup at the Seymour site. However, there are two responses to this argument.

First, any Government claim for the need to expedite cleanup at the Seymour site is undercut by its responsibility for the slow pace of these efforts. The Seymour litigation was initiated in May 1980, more than 2-1/2 years ago. Indeed, according to the Government's Complaint, the State of Indiana has been aware of the problems at Seymour since at least April 1978, when it initiated legal action to close the Seymour site. These delays should temper the Government's efforts to prevent any effective review of the proposed Consent Decree by invoking the public interest in prompt cleanup at Seymour.

Second, in any event, this interest in prompt cleanup at the Seymour site surely cannot override the prejudice and unfairness to other parties that have been asked to pay twice as much as those "chosen few" offered the settlement reflected in the proposed Consent Decree. Although in the limited time available for comments we have not had an opportunity extensively to research the issue, we are not aware of any cases involving Government claims against multiple parties where the Government has settled on more favorable terms with some parties than with others without first offering all parties equivalent settlement opportunities.

In short, we submit that particularly given the Government's proposed actions against other parties, the proposed Consent Decree would be "inappropriate, improper or inadequate," and that the Government should promptly take steps to modify the Consent Decree to offer similar terms to all parties involved.

Respectfully submitted,

Donald Harrison

Donald Harrison
Simeon M. Kriesberg

SHERWIN WILLIAMS

The Sherwin-Williams Company
101 Prospect Avenue, N. W.
Cleveland, Ohio 44115

November 4, 1982

RECEIVED
ASSISTANT ATTORNEY
GENERAL'S OFFICE
NOV 5 10 33 AM '82
LAND & NATURAL
RESOURCES DIVISION
DEPT. OF JUSTICE

Via Federal Express

Carol E. Dinkins, Esq.
Assistant Attorney General
Land and National Resources Division
Department of Justice
Room 2143
10th and Pennsylvania Ave., N.W.
Washington, D. C. 20530

Re: Proposed Consent Decree in United States v. Seymour Recycling Corporation, et al., DOJ Reference #62-26S-19

Dear Ms. Dinkins:

This letter expresses the comments of The Sherwin-Williams Company ("Sherwin-Williams") with respect to the proposed consent decree in United States v. Seymour Recycling Corporation, et al. This letter also constitutes a request by Sherwin-Williams to extend the period during which the public may submit comments with respect to the proposed consent decree. Sherwin-Williams believes that an extension of the comment period is necessary in order to allow it and other small generators an adequate opportunity to ascertain the effect of the proposed decree on their rights and obligations. Sherwin-Williams does not consider this request unreasonable in light of the fact that it has been two (2) years since the government first instituted a suit against Seymour Recycling Corporation. Furthermore, Sherwin-Williams believes that it will be impossible to determine the effect of this decree on its rights and obligations unless the government reveals the monetary and waste volume calculations for all responsible parties in this matter. A verbal request was made to Mr. Ramsey on or about November 2, 1982 for these calculations. Sherwin-Williams requests that this information be provided to all interested parties as soon as possible, and that they have at least ten (10) days within which to comment following the release of such information.

Sherwin-Williams believes that the federal government has acted inappropriately by neglecting to provide even the most rudimentary information to all generators interested in cooperating with the government. Sherwin-Williams participated in the now defunct generators' coordinating committee for approximately two (2) years. When a Sherwin-Williams representative attended an August 9, 1982 meeting of a group of large generators, he was

Carol E. Dinkins, Esq.
Department of Justice
Washington, D. C. 20530
November 4, 1982
Page Two

informed that the Justice Department had initiated the idea of settling with a small group of generators on a more favorable basis, and that the group was to be limited to approximately fifteen (15) generators. Sherwin-Williams was thereafter excluded from participating in further negotiations, and ultimately in the final settlement. This method of negotiating a settlement and the resulting consent decree does not serve the public interest.

The proposed consent decree provides for the settlement of the clean up of one of the largest hazardous waste disposal sites in the country by permitting generators allegedly contributing 51% of the waste at the site to pay a substantially smaller percentage of the estimated clean-up costs. This approach is entirely contradictory to your position that the government intends to approach the settlement of these types of matters in a manner which is equally fair and equitable to all interested parties.

When Sherwin-Williams first learned of the negotiations between the larger group of generators and the government, the minimum cash buy-out share ($100,000 to $150,000) was considered excessive in light of the waste volume initially attributed to Sherwin-Williams by the government. Sherwin-Williams thereafter repeatedly and unsuccessfully asked for the governments final estimation of the alleged waste volume contribution by Sherwin-Williams. As Sherwin-Williams' alleged share has increased dramatically (based on the government's final calculations), it now appears that it would have been advantageous for Sherwin-Williams to have sought inclusion in the consent decree.

While the expeditious clean up of the Seymour site is certainly desirable and in the public's interest, there is no good reason, especially in light of the government's repeated delays, to impose a deadline that will force nonparticipating generators to "speculate" as to the effect and fairness of the decree. Ostensibly, the results of this inadequate comment period will ultimately compromise the public's interest in this matter.

In conclusion, Sherwin-Williams urges you to provide the calculations which have been requested and to allow a ten (10) day comment period following the date of the release of such information. It also asks that you request that the Court postpone the scheduled hearing on the consent decree to a date which will accommodate the extended time period. In the event that you choose not to extend the comment period, Sherwin-Williams urges you to allow all generators the opportunity to settle this matter on the same pro rata basis as the largest generators. Your treatment of this matter on any other basis will be inconsistent with and contrary to the public interest.

Thank you for your consideration of this matter.

Very truly yours,

THE SHERWIN-WILLIAMS COMPANY

Deborah R. Wamsley
Attorney

DRW/ck

SQUARE D COMPANY
EXECUTIVE PLAZA
PALATINE, ILLINOIS 60067

EXECUTIVE OFFICES
(312) 397-2600

November 5, 1982

Mr. Stephen Ramsey, Chief
Environmental Enforcement Section
Department of Justice
Main Building
10th. and Constitution Avenue, N.W.
Room 1252
Washington, D.C. 20530

RE: United States of America v. Seymour Recycling Corporation, et al

Dear Mr. Ramsey:

It has been alleged by the government that Square D contributed waste to the Seymour Recycling site ("Site"); however, the amount which was alleged to be contributed was not significant, and as such, Square D has been characterized by the Environmental Protection Agency as a small contributor.

Recently, we became aware of the proposed settlement between the government and the 24 largest alleged contributors to the Site. Although Square D was not included in the group of 24, Square D is willing to settle on the same terms and conditions as offered to the group of 24. As we understand that settlement, Square D's share would be about $37,164. This amount is computed in the following manner (which appears to be the same calculations used in the offer to the group of 24).

196.35 = tons of waste allegedly contributed by Square D

79.250.29 = tons of waste allegedly shipped to the Site

$\frac{196.36}{79.250.29}$ = .24775 percent (alleged percentage contribution of waste by Square D)

15.000.000.00 = estimated total cleanup cost based upon proposed consent decree figures

.24775% x = $37,164 (amount to be paid by Square D)
15,000,000.00

As we pointed out in a separate letter to Ms. Mary Walker, allowing all alleged contributors to be treated alike is not only fair but is consistent with statements made by Ms. Carol Green, Assistant Chief of the Environmental Enforcement Section, at the generator meeting that was held on Friday, September 10, 1982.

At that time, Ms. Green stated that negotiations with the 24 companies were taking place but that any settlement offer with the 24 companies would be comparable to that offered to all of the other alleged contributors.

Square D makes this settlement offer in good faith, and we would appreciate your response to it as soon as possible.

Very truly yours,

R. C. Swanson
Corporate Manager of Construction

EMHART

EMHART CORPORATION
426 Colt Highway, Farmington, CT 06032
Mail: P.O. Box 2730, Hartford, CT 06101
Phone: (203) 677-4631 Telex: 994471

November 5, 1982

RECEIVED
ASSISTANT ATTORNEY
GENERAL'S OFFICE
NOV 5 2 05 PM '82
LAND AND NATURAL
RESOURCES DIVISION
DEPARTMENT OF
JUSTICE

Carol E. Dinkins, Esquire
Assistant Attorney General
Land and Natural Resources Division
Room 2143
U.S. Department of Justice
10th & Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Ms. Dinkins:

Emhart Corporation, whose wholly owned subsidiary USM Corporation has been identified by EPA as a potentially responsible party with respect to the Seymour site, hereby requests the Department of Justice to extend the ten-day period for public comment on the proposed Consent Decree in U.S. v. Seymour Recycling Corporaton, et al.,[1] from ten days to the full thirty days provided for in 28 C.F.R. §50.7(b), and to move the Court in that action to postpone the hearing presently scheduled for November 10, 1982, before Judge Dillin to a date at least ten days following the close of the thirty-day comment period.

Although the Seymour situation is serious and remedial action is needed, it is clear that there are no "extraordinary circumstances" which would justify limiting the thirty-day period for public comment provided in 28 C.F.R. §50.7(b). With all due respect, we believe that the Department's claim of "extraordinary circumstances" to shorten the public comment period on this matter is merely a device to rob the public and affected parties of any fair opportunity to comment on a Decree which the Department knows to be inequitable and highly controversial.[2]

---

[1] United States District Court for the Southern District of Indiana. Civil Action No. IP-80-457-C.

[2] We note that, in all but one case in which a Consent Decree has been entered by the Justice Department in the past three years, including several pollution cases involving imminent and substantial threats to the environment, a full thirty-day comment period has been provided. A review of these cases demonstrates that there is no principled basis for distinguishing the instant case.

Documents filed with the Court show that the Government and the parties to the proposed Consent Decree reached a final agreement some time prior to October 15, 1982, the date on which the consent to the Decree filed by Atlantic Richfield Company was executed. In view of the fact that the last consent to the Decree was executed by October 26, 1982, it appears that the Government allowed the parties, who had been engaged in intensive negotiations with the Government since as early as August of 1980, more than ten days to make up their minds on the acceptability of the Decree. What extraordinary circumstances could justify giving these parties, who have been fully involved in the process of drafting the Decree and who have had access to all of the facts underlying it, more time to comment and review the Decree than the public and other parties affected by the Decree who have had no prior opportunity to participate and who have been denied access to the facts underlying the Decree? Unless the comment period is extended to the full thirty days, the public interest intended to be protected by 28 C.F.R. §50.7(a) will be compromised.

Second, notwithstanding publication of notice in the Federal Register on October 29, 1982, the comment period provided is not, as a practical matter, even ten days. This Company did not receive the Justice Department's demand for payment of $122,630 and a copy of the proposed Consent Decree until November 2, 1982. Obviously, it was not possible for us to comment meaningfully on the proposed Decree until we had received a copy of it and had been advised of the settlement demands being made upon us. Thus, we are being provided only six days in which to formulate our comments, and only four of those days are business days.

Third, this Company, and, we are sure, other affected parties, have not been provided by the Department of Justice with sufficient information to make meaningful comments on the proposed Decree. Through this Company's prior communications and communciations with other parties excluded from the negotiations on the Consent Decree, the Department is aware of the concern that the signatories to the Decree are being given a highly favorable monetary settlement that will prejudice the parties excluded from the Decree by increasing their potential liability. It appears that the Government is asking the excluded parties to pay, on a percentage of waste basis, twice as much as the parties to the Decree; however, we are unable to establish this fact because the Consent Decree does not identify the tons of waste shipped by the signatories nor does it disclose the formula used to calculate the contributions of the signatories. It appears to us that these omissions were intentional, and calculated to deprive the public and affected parties of basic information necessary for commenting on the fundamental fairness of the proposed Consent Decree.

Fourth, several affected parties, including Emhart Corporation, have been planning to present comments at the hearing through outside counsel. However, due to the fact that the settling defendants involved in the proposed Consent Order comprise twenty-four major corporations, Emhart and many other affected parties have as yet been unable to find competent environmental counsel who does not have potential conflicts due to representation of one or more of the parties defendant on other matters. Several of the parties defendant have volunteered to waive any claim of conflict; however, certain of the defendants have been vigorously objecting to any participation in the matter by firms who have represented them on any other matter, whether relating to the environment or not. The end result is that many of the parties whose rights will be affected by the Consent Order will be unable to secure competent counsel within the foreshortened comment and hearing period, thus effectively denying these parties legal representation and a meaningful opportunity to participate as contemplated by Justice Department regulations and Judge Dillin's Order.

Finally, by virtue of 29 C.F.R. § 50.7(b), the Department of Justice has a duty to "receive and consider comments" submitted by the public, and not merely to file such comments with the Court. The scheduling of the hearing on the Consent Decree only two days after the close of the public comment period indicates that the Department of Justice has no intention of thoughtfully considering any comments it receives. The Department has been on notice for some time now that its contemplated execution of the Consent Decree is highly controversial. In view of these circumstances and the Department's legal duty seriously to consider public comments, we believe that the Department's decision to provide only a ten-day comment period and to hold a hearing within two days after the close of the comment period shows egregious disregard for the interest of the public and affected parties in meaningful participation and comments on the Department's execution of consent decrees in pollution cases.

Accordingly, we request the Department of Justice to provide a full thirty-day comment period on the proposed Consent Decree, to publish the tonnages and formula for contribution applied to the signatories, and to move the Court to postpone the hearing on the Consent Decree until a date no less than ten days following close of the extended comment period. In order to assure that we have sufficient information to comment meaningfully on the Decree, we are filing on this day the enclosed Freedom of Information Act Request.

We kindly request that you advise us of your decision on this request for extension of the comment period and postponement of the hearing by November 8, 1982, so that we may pursue other legal remedies that may be available to us.

Yours very truly,

John B Blatz

John B. Blatz
Group Counsel

Enclosure

cc: Stephen D. Ramsey, Esquire
Robert M. Perry, Esquire
Ms. Rita M. Lavelle
Gene A. Lucero, Esqurie
Michael A. Brown, Esquire
Edward A. Kurent, Esquire
The Honorable Anne M. Gorsuch
The Honorable S. Hugh Dillin

Thomas J. Baechle
Senior Attorney

Eaton Corporation
World Headquarters
100 Erieview Plaza
Cleveland, Ohio 44114

EATON

RECEIVED
ASSISTANT ATTORNEY GENERAL
OFFICE
NOV 1 4 32 PM '82
LAND & NATURAL
RESOURCES
DEPARTMENT OF
JUSTICE

October 28, 1982

Carol E. Dinkins, Esq.
Assistant Attorney General
Land and Natural Resources Division
United States Department of Justice
Washington, D.C.

Dear Ms. Dinkins:

I enjoyed having the opportunity to meet you and hear your presentation recently at the Corporate Counsel Institute presented by the Ohio State Bar Association in Columbus, Ohio on October 15. I thought your remarks were both timely and interesting. I also enjoyed having the opportunity to talk briefly with you after the presentation.

As we discussed briefly, I continue to be troubled by the approach being taken by both the Justice Department and the EPA in connection with the proposed settlement of the Seymour, Indiana disposal site, particularly in view of yesterday's announcement that a settlement has been achieved with a group of 24 generators. It appears to me that the approach being taken in this matter is not consistent with the approach taken in settlement proposals for other disposal sites and is not consistent with the approach which you indicated would be followed generally by the EPA and Justice Department. My concern relates to the fact that generators who are listed as having shipped proportionately small amounts of waste to the Seymour site will be offered a settlement proposal which is less favorable than the recently announced settlement.

This approach is contradictory to one of the themes of your remarks - that the government intends to approach the possible settlement of these matters in a manner which is fair and equitable to all concerned. The fairness of the recent settlement escapes me since, unless all generators are offered the same proposal, the effect of this settlement is to increase proportionately the potential liability of those generators which had less involvement with the Seymour site than the generators participating in the settlement.

EATON

I have spoken to lawyers representing a number of other generators in a position similar to that of Eaton Corporation and I believe that the opinion which I am expressing is widely felt among the smaller generators. It is totally unclear to me why the EPA and Justice Department have elected to deviate from the approach taken with respect to other disposal sites and, rather than offer to settle with all generators on the same basis, have agreed to a settlement which is more favorable to the larger generators. Mr. Ramsey has indicated that since the settlement with the larger generators will not pay for the entire cleanup of the site, the number of participants in that settlement was purposely limited so that the remaining cleanup costs can be sought from the other generators. This reasoning only serves to reinforce the obvious - that the settlement with the larger generators is unfair to the smaller generators.

I believe that the fairest course of action at this point would be to offer to all generators the opportunity to settle the matter on the same terms as the recent settlement. This approach would be more equitable and would reduce the feeling that the larger generators have been given a better deal. I urge you to consider this course of action and to offer settlement proposals to all generators which treat all parties in an equitable manner.

EATON

I plan to attend the ALI-ABA program on hazardous wastes next week and look forward to your remarks.

Very truly yours,

Thomas J. Baechle
TJB:gjb
cc: Michael A. Brown, Esq.
Edward A. Kurent, Esq.
Ms. Rita M. Lavelle
Gene A. Lucero, Esq.
Robert M. Perry, Esq.
Stephen D. Ramsey, Esq.

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MICHAEL E. PATTERSON
DOMINIQUE BLANCO

November 8, 1982

Carol E. Dinkins, Esq.
Assistant Attorney General
Land and Natural Resources
  Division
Department of Justice
10th and Pennsylvania Avenue, N.W.
Washington, D.C.

RECEIVED
ASSISTANT ATTORNEY
GENERAL'S OFFICE
Nov 8 2 52 PM '82
LAND AND NATURAL
RESOURCES DIVISION
DEPARTMENT OF
JUSTICE

United States v. Seymour Recycling
Corporation, et al.
DOJ Reference No. 62-26S-19

Dear Ms. Dinkins:

We represent Phelps Dodge Industries, Inc. ("PDI"). Pursuant to the notice which appeared in the Federal Register on October 29, 1982, we are hereby requesting an extension of the comment period with respect to the proposed Consent Decree entered into between the Government and twenty-four companies allegedly responsible for the generation of toxic waste materials disposed of at Freeman Field Industrial Park near Seymour, Indiana.

PDI has been informed that the Government considers it to be a potentially responsible generator of toxic waste materials disposed of at the Seymour site. PDI was not, however, invited to enter into the proposed Consent Decree. In fact, PDI knew nothing about the negotiations which led to the Consent Decree until it was announced publicly on or about October 27, 1982, and PDI did not receive a copy of the Consent Decree until November 4, 1982.

A cursory review of the Consent Decree indicates that it may unfairly discriminate against PDI and similarly situated generators. The Government is demanding that the generators which were not asked to enter into the Consent Decree agree to a different, "non-negotiable" settlement offer which requires them to pay more per ton of material shipped to the site than is being required of those generators which have entered into the Consent Decree. All similarly situated generators should be given the opportunity to settle with the Government on equal terms.

PDI, in any event, has not had the opportunity to carefully review and analyze the Consent Decree. The period provided for comments is so short as to effectively deny PDI the opportunity to comment at all. The assertion that the usual 30 day comment period was shortened to 10 days in order to "obtain...an expeditious start of cleanup activity" appears to be nothing more than a transparent attempt by the Government to rush approval of the Decree before interested parties have an adequate opportunity to consider its impact on their interests.

It is urged most strenuously that the comment period be extended for at least another 30 days. It is our understanding, moreover, that a hearing has been scheduled on the Consent Decree for November 10, 1982 before the United States District Court for the Southern District of Indiana. We urge that this hearing also be adjourned so that written comments on the Consent Decree can be fully considered by the Court.

Very truly yours,

Stephen C. Muther

Stephen C. Muther

cc: Clerk of the Court
United States District Court
for the Southern District
of Indiana

Monsanto

LAW DEPARTMENT

Monsanto Company
800 N. Lindbergh Boulevard
St. Louis, Missouri 63166
Phone: (314) 694-1000

November 4, 1982

Ms. Carol E. Dinkins
Assistant Attorney General
Land and Natural Resources Division
U. S. Department of Justice
10th and Pennsylvania Avenue, N. W.
Washington, D. C. 20530

Re: United States v. Seymour Recycling Corporation, et al.
D.O.J. Reference #62-26S-19

Dear Ms. Dinkins:

These comments are submitted in accordance with instructions contained in the notice which appears at 47 FR 49107 in the October 29, 1982 issue of the Federal Register. The notice states that comments will be received for a period of ten days with respect to a proposed Consent Decree between the Department of Justice and a number of generators of waste at the Seymour site. The Consent Decree purports to relieve said generators from further liability with respect to cleanup of waste at the Seymour site in return for the payment of money to the government by said generators.

1. The Consent Decree, on its face, does not disclose the basis on which the amounts to be paid by each generator party to the Consent Decree were determined. The limited information which has been made available to the public by the Department of Justice in the Consent Decree, and in news releases concerning it, indicates that the basis for liability in the Consent Decree is a different basis, more favorable to its generator parties, than that which is being offered to other generators of waste. This is completely contrary to the statements and commitments made by Department of Justice and EPA personnel to the generators at meetings called by the Department of Justice and EPA September 9 and 10, 1982, to discuss liability for cleanup of the Seymour site. At those meetings government personnel stated that settlement offers would be made to all generators on the same basis, and would be received by the end of September. Subsequent to those meetings, when it became known that the Department of Justice was meeting privately with several generators with a view toward settling liability on a different basis, several companies, including my client, requested an opportunity to participate in such negotiations. (See attached letter to Stephen D. Ramsey, Chief, Environmental Enforcement Section,

dated September 21, 1982.) Since all details of the basis for payment on which the Consent Decree was developed have not been made available, it is not possible at this point to know with certainty that a double standard is being applied. (The brevity of the comment period has severely limited our efforts to verify the basis for the Consent Decree.) If there is only one basis for liability, the Department of Justice should provide enough details to make this clear. If there is a double standard, then the Consent Decree would not only appear to be grossly unfair to generators being offered a less favorable settlement, it would also appear to be of questionable validity.

In the interest of retaining an effective dialogue between parties interested in this matter, and eliminating an obvious basis for litigation, it is recommended that the Department of Justice promptly either withdraw and void the Consent Decree or announce publicly that all generators which are not parties to the Consent Decree will be provided with an opportunity to settle liability on the same basis as the generators which are parties to the Consent Decree. Failure to take one of these actions could cast doubt as to the good faith employed by the government agencies involved.

2. The 30 day period for comments prescribed by 28 CFR 50.7 should be provided with respect to this matter. The Seymour site has been in existence for a number of years. The Department of Justice, itself, has apparently been involved with this site for several years. When dealing with a situation as complicated as the Seymour site, with several hundred alleged generators of waste, and a Consent Decree of a questionable nature, a 30 day notice period is hardly an adequate time period. The arbitrary shortening of this comment period to 10 days is unnecessary and leaves the impression of undue haste to complete a questionable proceeding. The full 30 day comment period should be allowed.

Your favorable consideration of these comments is requested.

Yours very truly,

Phocion S. Park

Phocion S. Park
Environmental Counsel

jr

Enclosure

cc: Ms. Rita M. Lavelle
Assistant Administrator for
Solid Waste and Emergency Response
U. S. Environmental Protection Agency

Monsanto

LAW DEPARTMENT

Monsanto Company
800 N. Lindbergh Boulevard
St. Louis, Missouri 63167
Phone: (314) 694-1000

September 21, 1982

Stephen D. Ramsey, Esq.
Chief, Environmental Enforcement Section
U. S. Department of Justice
10th and Constitution Aves., N. W.
Washington, D. C. 20530

Re: Seymour, Indiana Site

Dear Mr. Ramsey:

At a meeting in Indianapolis conducted by the Department of Justice, Environmental Protection Agency and State of Indiana officials, a schedule of events for possible settlement of Superfund claims concerning the above referenced site was discussed. The government stated that the basis for settlement with each company would be mailed by the government to the company, with the company having a week to consider its position with respect to the settlement offer.

We have just learned that negotiations are underway between the government and a small group of generators for possible settlement of Superfund liability on a different basis than that which will be provided to the remainder of the 430 Seymour parties. Monsanto Company hereby requests that it be provided the opportunity to participate in the settlement offer which will be made to the small group of companies. We have no desire to upset any settlement language or positions which may already have been agreed upon. We merely request the opportunity to consider settling, on the same basis as that provided to the small group of settling companies, any claims which the government may have against Monsanto Company.

Your favorable response to this request will be most appreciated. Discussion of this matter should be with Monsanto's Brent J. Gilhousen, who can be reached at the above address and (314) 694-8504.

Yours very truly,

Phocion S. Park
Environmental Counsel

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RICHARD J. SULLIVAN, CHIEF COUNSEL
CLYDE E. WOODLE, CHIEF ENGINEER
MICHAEL J. TOOMEY, MINORITY
STAFF DIRECTOR

Committee on Public Works and Transportation
U.S. House of Representatives
Room 2165, Rayburn House Office Building
Washington, D.C. 20515
Telephone: Area Code 202, 225-4472

B-376 Rayburn Building
Washington, D.C. 20515
April 25, 1984

Mr. John M. Rademacher
Vice President
Environmental, Health & Regulatory Affairs
Velsicol Chemical Corporation
341 East Ohio Street
Chicago, Illinois 60611

Dear Mr. Rademacher:

For the past several months, the Subcommittee on Investigations and Oversight of the Committee on Public Works and Transportation has been holding hearings on the Seymour Recycling Corporation's (SRC) abandoned hazardous waste site in Seymour, Indiana. This review of the Seymour Recycling case is part of an ongoing examination of hazardous waste contamination of the nation's water resources, and the U.S. Environmental Protection Agency's efforts to administer the 1980 "Superfund" statute and other federal laws enacted to address hazardous waste pollution problems.

My reason for writing to you is to follow-up on discussions that you have had with my staff, and to request your assistance in providing the subcommittee with further information concerning both Velsicol Corporation's involvement with the Seymour Recycling site, and your company's hazardous waste disposal practices. Specifically, it would be most helpful to the subcommittee if you would provide us with information pertaining to the following:

-- Your company's policies, practices and procedures for disposing of hazardous wastes over the past several years, and any changes in these that have been made;

-- Your company's policies and practices for ensuring that hazardous wastes are actually disposed of in an appropriate and legal manner, and the extent to which these were applied in the Seymour case;

-- The extent to which your company makes use of, and/or encourages the use and/or development of hazardous waste disposal technologies other than the use of landfills;

-- A review of your company's involvement, if any, in the settlement negotiations with the federal government that led to the October 26, 1982 settlement agreement for the $7.7 million surface cleanup of the Seymour Recycling site;

-- Why a surface cleanup at Seymour Recycling was not initiated by you and/or other companies at an earlier date;

-- Your views of the appropriateness and equity of the federal government's October 26, 1982, SRC settlement with the IBM/TOPOL group of 24 companies;

-- Your views of the appropriateness of the EPA's pro-rata settlement approach;

-- Your company's rationale/reasons for not accepting the pro-rata settlement offer made by the federal government, and;

-- Any recommendations you have for changing the administration of the Superfund law, and/or for amendments to the law itself.

In addition to the foregoing points, we would also welcome any comments that you may have concerning other points or issues that you feel deserve attention and that are germane to the subcommittee's inquiry, such as the adequacy of state and local controls over hazardous waste transportation and disposal practices. We would also welcome any comments you may have concerning the "victims compensation" issue, that is, the payment of compensatory damages to individuals who believe their health problems stem from exposure to hazardous wastes.

The subcommittee hopes to conclude this phase of its inquiry by the end of June of this year. It will, therefore, be most helpful if we could receive your response to this letter in the next few weeks. I look forward to your cooperation and assistance in this matter.

With best wishes, I am,

Very truly yours,

Elliott H. Levitas
Chairman
Subcommittee on
Investigations and Oversight

EHL/tjm
cc: Harvey S. Gold
Joan M. Kovalic

VELSICOL CHEMICAL CORPORATION

WORLD HEADQUARTERS
341 EAST OHIO STREET
CHICAGO ILLINOIS 60611
(312) 670-4500

June 29, 1984

Honorable Elliott N. Levitas
Chairman
Subcommittee on Investigations and Oversights
B-376 Rayburn House Office Building
Washington, D. C. 20515

Re: Superfund Oversight Hearings

Dear Mr. Levitas:

We are pleased to respond to your request for our assistance in providing the subcommittee with some information about Velsicol's hazardous waste disposal practices and our involvement with the Seymour Recycling Site. We hope that the enclosed materials are responsive to your interest.

Velsicol is committed to a program of environmental security and has taken and will continue to take the necessary steps to ensure full compliance with this program. We are pleased to invite you and members of the subcommittee and its staff to visit our sites. We have arranged such visits in the past for representatives of state and federal regulatory bodies, environmental and public interest groups, and Congressional staff. We believe the visits provide an excellent first-hand opportunity to discuss toxic chemical controls and the implementation of a number of environmental statutes.

We appreciate the opportunity made available to us to work with the subcommittee.

Sincerely,

John M Rademacher

John M. Rademacher
Vice President
Environmental, Health and
Regulatory Affairs

Enclosure

cc: R. Prolman

(1) Velsicol's policies, practices and procedures for disposing of hazardous wastes over the past several years, and any changes in these that have been made.

After involvement in and identification with several major chemical mishaps and controversies in the mid-1970's, Velsicol Chemical Corporation set a new corporate charter in 1978 when it established environmental security as the company's top priority.

In an unprecedented move, a company-wide management meeting was held in June of that year at which time the president of Velsicol's parent company stated categorically that this new priority would be placed before profit and before growth.

To accomplish this goal, the handling of environmental and related activities was elevated as an equal partner with manufacturing and marketing in the corporate structure, breaking the traditional organizational mold of serving as a staff function. At least for the immediate future the environmental activities would be organized as a line operation and its authority would be known internally and externally.

The establishment of the Environmental, Health and Regulatory Affairs Division formalized this effort and placed human health and environmental security as overriding concerns for all company manufacturing, distribution, disposal, marketing, sales and support practices.

Through the division, Velsicol has accomplished the objective of creating an accountable system to attain and maintain its environmental and health priorities. The company has improved and continues to make progress in such areas as: current plant waste and treatment operations, disposal of hazardous waste to secure off-site treatment or disposal facilities, worker health and a government affairs program involving local, state and federal entities.

The division has a separate budget and is responsible for the design, construction, and monitoring of all environmental controls within Velsicol, including compliance with permitting requirements.

Recently, another key organizational change was made, transfering responsibility for the hazardous waste disposal manifest from the plant level in the Manufacturing Division to Corporate Traffic and Distribution. The purpose of this was not only to internally facilitate the traffic and recordkeeping function, but also to elevate the level of visibility and responsibility within the corporation for control of the manifest.

In addition to these internal reorganizations, Velsicol created the Environmental Center which is located in Memphis, Tennessee. It is the center of Velsicol's environmental security efforts at the plants, its regulatoı, compliance program, Resource Conservation and Recovery Act (RCRA) and Superfund activities, and past disposal site management. The center also houses Velsicol's environmental chemistry laboratory, which has the capability of performing highly sophisticated chemical analyses. In addition to the operation under applicable good laboratory practices regulations, a unique external quality assurance program was imposed which continually measures the precision and accuracy of each chemist in analyzing each of the normal environmental parameters. To Velsicol's knowledge, no other laboratory has as complete a quality assurance program. Up to 20% of total analytical laboratory time is devoted to this program. Within the five year period 1978-1983, Velsicol created the center and staffed it with an experienced professional staff sensitive to environmental issues. Attachment A provides a more detailed description of the center and the laboratory.

To have direct access to operations affecting environmental security, environmental managers were placed in each of the major production facilities. It is important to note that as the initial goals of the division were achieved on a plant-by-plant and site-by-site basis, operating facilities were in turn given back the responsibilities for environmental practices. This was always the long-term objective of the environmental program when first conceived with management recognizing that the division's strong centralized authority should cover the initial stages of clean-up and program placement.

Earlier, in 1977, Velsicol initiated written policies and procedures for hazardous waste disposal and hazardous waste manifest system. These policies and procedures were adopted prior to the promulgation of regulations implementing RCRA which was enacted in 1976. Since the publication of the U.S. Environmental Protection Agency's (EPA) regulations, Velsicol has had to make only two minor changes in wording in order to be in compliance with federal regulations. A copy of Velsicol's Policy for Environmental Security and current Hazardous Waste Disposal Policy are enclosed (Attachment B).

In the past, Velsicol's waste disposal practices were in accordance with state-of-the-art technology. Many of the problems being addressed today are the result of using the technology available at the time of disposal. For example, in the absence of commercial incineration facilities, it was once an accepted practice to store liquid wastes in an on-site containment with a clay stratum. By today's standards not only was the state-of-the-art technology then in use less environmentally sound, but also the measurements relied on for safety and environmental impact calculations were orders of magnitude less sensitive than the low-level analytical measurements now being routinely made, eg. parts per billion and parts per trillion. It is important to keep in mind that to some degree the treatment standards are now more stringent because the level of measurement has become more precise. Analytical sensitivity has increased greatly over the past few years, sometimes with tolerance levels reduced to "zero." Velsicol now often sets its standards higher than those required by law or regulation. For example, in its internal enforcement function, Velsicol's manifest system and auditing program are more stringent than those required by federal and state authorities.

Velsicol is now managing its hazardous waste through a three-pronged effort:

-- The identification and securement of all past disposal sites;

-- Assured destruction or disposal of currently produced wastes in secure off-site facilities; and,

-- In-plant controls to reduce or eliminate waste production and development of resource recovery and reuse systems and in-house incineration capability.

Velsicol's Environmental, Health and Regulatory Affairs Division is, therefore, equipped with the necessary staff and budget to install and operate its environmental programs. Of even more importance is the continuing commitment by management to support the major investments needed to meet environmental objectives.

Past Disposal Sites

Velsicol has embarked upon a pollution control program costing over $25 million. This program has seen the essential completion of remedial work at seven sites over which Velsicol has direct control. It is important to note that remedial work on five of these sites-- Marshall, Illinois; St. Louis, Michigan; Golf Course Site, St. Louis, Michigan; Chattanooga, Tennessee; and Hardeman County, Tennessee-- was completed, or substantially so, without EPA or the affected states initiating litigation to force Velsicol to do the work. In fact, with the exception of the Chattanooga site, all of these sites were on EPA's National Priority List (NPL). The following outlines the work which has been done at each of these sites.

Marshall, Illinois Site

As a result of the manufacture of resins and chlorinated organic chemicals over a period of approximately 30 years, Velsicol's Marshall plant constructed a 20 million gallon pond for organic waste. The 5/6 pond, as it is referred to, once consisted of two ponds with an adjacent area for storage of old equipment, drums, pallets, etc., and covered a total area of approximately 22 acres. During the period 1935-1966, almost all of the plant effluent, containing wastes from resin and chlordane units, passed through these ponds as sludge. Now process waste water and storm water run-off from the operating plant are collected and deepwelled in a properly designed and constructed facility, fully approved and monitored by the state authorities. Similarly, still-bottom residues and heavy organic sludges are collected, drummed and shipped off-site for destruction.

Furthermore, in an effort to secure the site, in 1980 Velsicol began an extensive project aimed at the stabilization of the residual sludges. The project began in 1980 and included testing various stabilization methods as well as experimenting with covering sludge without stabilizing the base. During the latter part of 1981, several consultants were asked for an evaluation of the sludge's potential for stabilization. The result was at least five proposals with varying degrees of effectiveness and with costs ranging from $.35 per gallon - $1.00 per gallon for materials and labor alone for an overall range of $10 million - $30 million. None were acceptable from either a technical or a cost standpoint. Also Velsicol looked at incineration which would have been only partially effective at best, with the operation spanning several years and costing over $50 million. Velsicol intensified its efforts at stabilization through an independent laboratory and subsequently developed a proprietary process for stabilization of organic sludge.

Stabilization Technology

The technology referred to above was invented to solve a problem for Velsicol; however, the sludge stabilization has unlimited potential to solve waste problems for companies with similar problems. In a typical sludge pond stabilization program, mixing agents are stockpiled outside the actual waste site and delivered by dump truck to the mixing area. A bulldozer pushes the material near the sludge and a dragline or backhoe is used to mix the materials with the sludge. The consistency of the sludge begins to change immediately. Next, portland cement is applied through a pressure hose connected to a specially designed cyclone separator. Using centrifugal force, the device separates the cement from the pressurized air, minimizing the potential for dust. The backhoe digs all the way down to the bottom of the pond to assure that all the reagents are mixed thoroughly and that there are no small pools of untreated sludge. Once the materials have been mixed, the sludge is stabilized to a substance much like heavy clay. Within two days the material is stable enough to bear heavy equipment and vehicles.

The treated sludge can be shaped or it can be transported to a suitable landfill site. After being cured, the sludge can be compacted to densities that show very low water permeability and high stability. This provides an environmentally secure site and minimizes the danger of leaching which could lead to groundwater contamination. The density and structural integrity of the material is such that it minimizes settling due to compression, thus preventing distortion of the surface cap. Since the mixing is done in place, the technique dramatically reduces vaporization of any volatile organics thereby minimizing worker and community exposure.

Capping of the 5/6 Pond Site

Once stabilization of the 5/6 pond is completed, the site will be capped with three feet of clay, covered with topsoil and seeded. The monitoring system for the site consists of eight monitoring wells to be used to monitor groundwater in the drift as well as the bedrock. This monitoring is being done in conjunction with the state Geological Survey as well as state and federal environmental authorities. Six downgradient wells will be placed in three locations on the westerly side of the site and two wells will be placed in one location upgradient to the site.

St. Louis, Michigan Site

In December 1976, Velsicol Chemical Corporation merged with Michigan Chemical Company which had previously operated the St. Louis, Michigan plant. The site has approximately 52 acres and contained the facility which manufactured a number of chemical compounds. These included the flame retardant chemical polybrominated biphenyl (PBB), various magnesium and bromine compounds, and the pesticide DDT. In addition, there was a three-acre site (golf course site) located across the Pine River/St. Louis Reservoir from the plant site, where Michigan Chemical Company had periodically burned various wastes over the years.

In 1979, Velsicol voluntarily moved ahead with major site control efforts while negotiating in good faith with state and federal authorities. In November 1982, these negotiations culminated when Velsicol, the State of Michigan, EPA and the U.S. Department of Justice (DOJ) signed an overall $21 million settlement agreement for clean-up of the former Michigan Chemical Company site in St. Louis, Michigan, as well as the Gratiot County Landfill which the State of Michigan will remediate. Past and proposed clean-up activities are as follows.

Storage Warehouse

Soil contamination was caused by spillage of chemicals stored in the warehouse when the plant was operating. Velsicol demolished the warehouse and moved the contaminated soil to the main plant site. Clean soil was used to backfill the area.

Main Plant Site

The main plant was operated as a chemical facility since the early 1900's. Over the years, chemical compounds spilled onto the ground, resulting in contamination of the plant site. Following a protocol agreed to by federal and state regulatory agencies, Velsicol demolished all buildings on the site. Some steel was sent off the site for recycling after being tested for possible contamination and being subjected to appropriate clean-up measures. Under the terms of the protocol, Velsicol has agreed to proceed with total encapsulation of the site. A containment wall encircles the site at a depth necessary to tie into the impermeable clay till that underlies it. The surface of the site will be covered with a compacted clay cap ranging up to three feet in thickness. A permanent groundwater collection system has been installed inside the constructed clay vault with any collected water being disposed of in Velsicol's existing permitted disposal well. All of the encapsulation work is to be completed before December 1984, according to terms of the agreement.

EPA Region V Administrator, Valdas V. Adamkus, commended Velsicol officials for "their diligence in proceeding with a carefully planned clean-up while negotiations continued. This is an excellent example of a federal/state partnership and an extremely positive approach on the part of private industry in handling a complex hazardous waste clean-up situation." For views of Velsicol's efforts on the St. Louis project, see the attached letter from Mr. Dale S. Bryson of EPA's Region V office (Attachment C).

Golf Course Site, St. Louis, Michigan

The golf course site was a three-acre site located across from the Pine River from the St. Louis plant site, where Michigan Chemical Company had periodically burned various wastes over the years. On or about January 4, 1982, Velsicol received the signed agreement among Velsicol, the Michigan Department of Natural Resources, EPA and DOJ to effect an agreed upon control program for this site.

On January 6, 1982, Velsicol's contractor initiated a $2 million program involving unprecedented winter time removal of some 77,000 cubic yards of contaminated soils from the golf course site and transferred them to the old Michigan Chemical plant site where they were incorporated under the working cap of that site. This program was under strict health and hygiene, air monitoring and neighborhood impact protocols which minimized exposures to workers and people in the community alike. The transfer was completed by late February and the contouring and addition of clay and soil to the site were completed by mid-April 1982.

State and federal inspections confirmed satisfactory completion of the work. Full releases were agreed to and given by the State of Michigan, the EPA and DOJ. These were reconfirmed in the consent decree entered into federal court on December 27, 1982. Upon petitioning by Velsicol, documenting the clean-up work which had been completed, the golf course site was removed from the NPL by EPA in September 1983.

Chattanooga Residue Disposal Site

Velsicol's Chattanooga plant dates back several decades. Although it has manufactured herbicides in the past, today it produces a variety of plasticizer building blocks and products. During the late 1960's, an area covering approximately 15 acres immediately to the east of and adjacent to the Chattanooga facility was used by Velsicol for the disposal of several types of production residue. This disposal area has been inactive for the past several years as Velsicol has been disposing of its production residues through approved contract disposal firms.

An assessment of the site's environmental integrity was completed in 1979 by a consultant who concluded that it appeared likely that there was on-site contamination. Thereafter, Velsicol embarked upon a program to improve the environmental quality of the site. The State of Tennessee and EPA's Region IV office were apprised of Velsicol's decision and letters of agreement memorializing the voluntary nature of the effort were exchanged between Velsicol and the Regional Administrator of EPA's Region IV in 1979, well before the enactment of Superfund (Attachment D).

The specific goal of the project was to prevent rainwater from infiltrating through the chemicals in the residue disposal pits, thereby eliminating the leachate generated, and removing the potential for groundwater contamination. The project also provided for the monitoring of the quality of the groundwater.

Preliminary engineering designs for an appropriate control system were explored. Since the residue disposal site was on a hill and underlain with limestone strata and included perched water tables, it was decided to provide a combination clay and membrane liner cap. It was felt that this type of cap, carried down to the lowest estimated elevation of any of the residue pits, would serve to dry up any perched water within the hill and eliminate any hydraulic driving force through the residue to the regional groundwater table below the hill. The project scope was to cap 10.8 acres of disposal pit area, plus 3.8 acres of recharge area to the north. To this, 2.5 acres were added where random deposits of residue were discovered in the fill at the east end of the hill. This placed 17.1 acres under the chlorinated polyethylene membrane. In addition, 1.5 acres were capped with clay. Monitoring of the effectiveness of the cap is based upon pieziometric measurements, rather than quality changes.

It was also necessary to obtain concurrence from the local Chattanooga/Hamilton County Air Pollution Control Bureau and Board which at that time had jurisdiction over any risk of possible air pollution through a consent judgement issued several years earlier by the Chancery Court. Velsicol resolved the issue of any possible air pollution by providing a separate on-site testing facility, manned at all times during construction, with authority to institute immediate cover procedures using a standby clay source any time the instrument went over maximums established by the Air Bureau. Although the most frequent source of monitoring alarms was diesel exhaust fumes from the construction equipment, in those instances when residues were exposed, Velsicol was able to re-cover the spot before the meter peaked. Completion of the project, including top soil and seeding, was realized in October 1980 well ahead of schedule.

Both the water quality and water level measurements to date show a dramatic effect from the capping project. Steady downward trends in all organic compounds known to be buried at the site, and the essential failure to detect other organic compounds in significant amounts, indicate that the cap has been effective in isolating the contents of the landfill from the local aquifer. The short time between capping and detection of lower levels of contamination gives added confidence that long-term effects due to a relatively slow water transport in the local aquifer should not be a significant factor. This rapid response to a change in conditions is typical of a limestone substrata. The water level measurements confirm the water quality data in all respects. The data indicates the local aquifer does not extend into the actual burial sites, and the perched water levels under the cap have fallen.

Hardeman County Disposal Site

The Hardeman County, Tennessee, landfill was used to dispose of wastes from Velsicol's Memphis plant for the period 1964-1973. Approximately 24 of the 243 acres of property were used to dispose of a variety of chlorinated hydrocarbon residues. It was estimated that the groundwater used for drinking supplies in the area was protected, based upon a 1967 USGS study of groundwater movement at the site and through the installation of a monitoring well. In 1977 or early 1978, a few of the local residents reported a strange odor in their water. It was subsequently determined to be carbon tetrachloride and chloroform from the landfill.

The state immediately initiated emergency provisions to supply safe drinking water. As soon as it was determined that the landfill could possibly be the cause of the well contamination, Velsicol immediately set in motion a plan of action to rectify the situation. State and EPA officials, as well as local residents, were immediately notified of this opinion. Velsicol also initiated contact with the news media and provided them with the facts as then known. Velsicol offered to pay the water connection fee for the dozen families affected so that they could be hooked up to a permanent fresh water supply. Velsicol also agreed to pay for the temporary supply of fresh water which was then being provided by the state.

At the time, it appeared that a permanent water system would not be available for at least five months, so Velsicol installed a water system for the families with underground piping. In addition, Velsicol did the following: replumbed all affected homes; replaced all hot water heaters; replaced washers, driers, dish washers, ice makers, pots, pans, plastic dishes, coffee pots and other cookware; reimbursed the families for all home/prepared, canned and frozen foods; contributed $25,000 to the town of Toone, Tennessee, which, by the way, serves many more families than just the dozen adjacent to the landfill; made air sample studies in two of the homes with the highest well contamination concentration in order to make certain that the air was satisfactory; conducted soil sample studies in garden plots and orchards and determined that there was no reason not to continue to use these areas; surveyed wildlife (squirrels, rabbits, deer, etc.) and determined that they were free of contamination.

Plans and specifications for capping the residue disposal site were prepared by a group of internationally recognized consultants and were accepted by the State of Tennessee and EPA. On July 10, 1980, signed letters of agreement were exchanged between the Commissioner of Public Health for the State of Tennessee and Velsicol's Vice President for Environmental, Health and Regulatory Affairs. The exchange of letters was vital in that it established the voluntary nature of the company's commitment.

On July 26, 1980, construction was begun on capping the residue disposal site to minimize infiltration of surface water into the disposed waste and to promote surface run-off from areas of waste disposal. The cap was completed two months ahead of schedule in November 1980. The clay cap, averaging two feet in thickness, covers almost 28 acres of the site and incorporates monitoring systems, including lysimeter installations, in critical spots. The entire site has developed a good stand of grass.

Quarterly sampling of the ground and surface water has been underway prior to cap installation. The quarterly monitoring program has proved invaluable in developing a geo-hydrologic model of the affected aquifer. It demonstrates that it is confined (approximately 1,000 acres) and that the surface waters, their sediments, benthic and aquatic life, and the wildlife, are now normal and that the controls are effective in protecting the environment and people. Of the 1,000 acres only approximately 15 acres constitute home sites and all persons residing within the plume confines are served by a safe municipal water supply.

As part of a series on the national waste disposal controversy, the Boston Globe reported in the spring of 1979:

> "Since it is likely to be years before the EPA enforces hazardous waste regulations, the current unfolding of the mess in Toone [Hardeman County], Tennessee could provide a model for voluntary action by other chemical companies as future hazards are uncovered."

(2) Velsicol's policies and practices for ensuring that hazardous wastes are actually disposed of in an appropriate and legal manner, and the extent to which these were applied in the Seymour case.

With the establishment of the Environmental, Health and Regulatory Affairs Division in the spring of 1979, centralized control over all environmental policies and practices, including hazardous wastes, was transferred from the individual production plants to Velsicol's headquarters in Chicago. Under the further direction of Velsicol's RCRA and Superfund Manager Velsicol manages its wastes from generation to disposal. The RCRA management system is a preventative maintenance program designed to assure the company that all of its facilities and contractors are operating in accordance with all applicable regulations as well as good environmental operating practices.

Since 1979, the following controls and practices were established and are being maintained:

-- Velsicol's Hazardous Waste Manifest System is in addition to manifests required by state and federal agencies.

-- Velsicol conducts a minimum of two (2) Environmental Audits per year of all formulators, disposers and transporters, using Velsicol's copyrighted audit system.

-- Random checking of transporters by Velsicol's Environmental Center staff, actually tracking the vehicle from the Velsicol facility to the disposing facility.

Velsicol's current manifest system requires more information than does EPA's. For example, in addition to the number and hazardous classification, Velsicol requires a complete description of the waste, including chemical composition, weight percentage range, hazardous properties, including whether the waste is toxic, flammable, water reactive, etc., its flash point, physical state and specific gravity. Also, a daytime and emergency telephone number for the waste generator is required.

Currently, Velsicol has no active on-site landfills or incineration. All wastes are sent to Class I commercial landfills or, when wastes can be burned, to commercial incinerators. Before Velsicol will dispose of its wastes at a commercial facility the facility must pass Velsicol's RCRA audit. In this connection, and as mentioned above, all of Velsicol's active disposers, transporters and formulators are audited at least twice a year. Where minor deficiencies are found, Velsicol will continue to use the facility only if it is aware of movements being made to take corrective action. The deficiency will then be assessed during the second audit as a follow-up to determine whether corrective action has indeed been implemented. The random checking procedure for transporters and disposers, for example, involves staff personnel from the Environmental Center obtaining information on the nature of Velsicol's waste to be collected and deposited and then meeting the waste hauler at the designated facility to determine if all practices and recordkeeping are in accordance with the manifest's specifications. Additionally, Velsicol's RCRA audit team conducts frequent audits of Velsicol's plants, research facilities and warehouses.

Training is a key element of Velsicol's hazardous waste management program. The operating personnel in the plants have primary responsibility for carrying out the activities involving the generation, storage, transportation, and disposal of waste, as well as the maintenance of records as required by the various laws, regulations, and permits for those activities. The Manager of RCRA and Superfund put together a training program to educate plant management and operating personnel about the requirements under RCRA, as well as general good environmental operating practices. This training program is mandatory for all Velsicol personnel who handle hazardous waste.

Velsicol is still in litigation regarding the Seymour site (U.S. v. Seymour Recycling Corporation, et al.) and also the factually-related Chem-Dyne site in Hamilton, Ohio (U.S. v. Chem-Dyne, et al.) and, as such, cannot presently comment on Velsicol's specific hazardous waste disposal practices until a settlement or an adjudication of these cases. Velsicol appreciates the subcommittee's understanding in this regard.

(3) The extent to which Velsicol makes use of, and/or encourages the use and/or development of hazardous waste disposal technologies other than the use of landfills.

As a matter of corporate policy, Velsicol seeks to avoid disposing of its liquid wastes in a landfill unless incineration is technologically impossible or economically infeasible. When necessary, liquid waste may be transported for treatment and disposal to a landfill specifically designed for that purpose.

Currently, 90-95% of Velsicol's liquid waste is incinerated at off-site commercial facilities. In addition, test burns and/or cost estimates have been carried out for the incineration of solids and sludges at the same commercial facilities. These materials are currently being landfilled. Where landfills are used, it is Velsicol's practice to select only off-site commercially approved facilities. Concerning the liquid waste which is not incinerated, work is underway to use this material as a fuel extender in an environmentally acceptable fashion. All waste residues are evaluated for waste exchange potential.

Velsicol has initiated major in-plant controls to reduce water usage and waste production, including hazardous wastes. At Velsicol's largest plant, Memphis, Tennessee, this has resulted in substantial reductions of chlorinated hydrocarbons discharged to the city sewers, water usage, and overall hazardous waste production. The soil stabilization efforts combined with best management practices have reduced storm-induced discharges of organics to an annual level well below the EPA mandated one-day maximum discharge for the Memphis North Treatment Plant. Environmental control efforts were concentrated in three areas: soil stabilization and erosion control, spill prevention control and counter measure, and point source reduction. More than $5 million dollars was invested in the Velsicol Memphis plant clean-up: $3 million on process controls, almost $1.4 million in spill pollution control, and the balance on a pilot treatment plant developed in conjunction with EPA's guideline program.

In order to assure itself of a viable means to dispose of its wastes in a secure fashion, Velsicol is moving forward with the development of in-house resource recovery or incineration capabilities so that it will no longer be necessary to ship or bury its waste. Recently, Velsicol has spent over $200,000 on new initiatives in waste disposal, such as the study and design of an on-site incinerator facility at Velsicol's Memphis plant. Also, study is underway on an alternative to conventional incineration methods, to develop a new technology to destroy waste. Both liquid and solid wastes could potentially be handled by this technology. Recently, Memphis State University completed an extensive study of bench scale destruction tests with bacteria on certain Velsicol wastes. Meanwhile, efforts are continuing at each plant to reduce waste generation levels with on-site waste treatment methods which are being thoroughly evaluated by Velsicol. These investments stand as one indicator of Velsicol's commitment to environmental security.

(4) A review of Velsicol's involvement, if any, in the settlement negotiations with the federal government that led to the October 26, 1982, settlement agreement for the $7.7 million surface clean-up of the Seymour Recycling Site.

Velsicol had no involvement in the settlement negotiations that led to the October 26, 1982, settlement agreement. It was entirely appropriate that Velsicol have no involvement because, based on information then available to both EPA and Velsicol, it was not at all clear to either party whether and to what extent any Velsicol material might have been transported to the Seymour site. In fact, in September 1982, EPA informed Velsicol that it was not listed on the EPA "waste-in" list of 350-400 companies that were known to have sent waste materials to Seymour for disposal.

Under the circumstances, Velsicol was unable to accept the settlement offer made by EPA and DOJ in November 1982. Taking into account what was then known about the amount of Velsicol's waste which might have been transported to Seymour, the volumetric and dollar figures offered by EPA and DOJ were at least seven times too high.

(5) Why a surface clean-up at Seymour Recycling was not initiated by Velsicol and/or other companies at an earlier date.

Velsicol has no knowledge of why other companies did not initiate a surface clean-up at an earlier date. Please see the response to question (4) in regard to Velsicol.

(6) Velsicol's views of the appropriateness and equity of the federal government's October 26, 1982, SRC settlement with the IBM/TOPOL group of 24 companies.

In Velsicol's opinion, the settlement has been justly criticized on the basis that the government adopted the position that only potentially responsible parties, cumulatively representing on the order of 50% of the waste at the site, would be allowed to participate in the settlement negotiations. Thus, very few of the approximately 350 potentially responsible parties were aware of the negotiations being conducted by the government behind closed doors with two dozen companies. Consequently, other parties were given no notice or opportunity to participate in the settlement, except to accept terms subsequently dictated to them on a "take it or leave it" basis. It is Velsicol's belief that such a settlement approach by the federal government was neither appropriate nor fair.

Please see the response to question (8) for additional comments.

(7) Velsicol's views of the appropriateness of the EPA's pro-rata settlement approach.

A pro-rata settlement approach, based solely on the volume of waste, is not inappropriate if it is done properly, and if it is based on accurate records. Unfortunately, in the Seymour pro-rata settlement approach absolutely no flexibility was incorporated into the process whereby EPA and DOJ representatives could make adjustments in the offer in the event of errors in calculating the volume of waste attributable to each company.

It is Velsicol's belief that, because such errors did occur and because EPA and DOJ were without flexibility to make correspondingly appropriate adjustments in the settlement offer, a number of companies which might otherwise have settled, did not do so.

(8) Velsicol's rationale/reasons for not accepting the pro-rata settlement offer made by the Federal government.

Velsicol was first contacted by EPA and DOJ regarding Seymour when it received a notice letter about six weeks prior to a meeting of potentially responsible parties scheduled for September 10, 1982. At that meeting, the potentially responsible parties were advised that EPA would be sending them an agreement letter with EPA/DOJ regarding a "covenant not to sue" which would contain an assigned dollar amount to be paid by each company. They were advised by EPA and DOJ that there would be no opportunity to suggest revisions in the document. The companies were also informed that agreement with respect to the document and the dollar amount specified therein had to be reached by October 1, 1982. This allowed a total time lapse of less than three weeks for all negotiations to be completed prior to settlement discussions terminating and litigation being initiated by the United States. This is in contrast to the more than two years of negotiations that had transpired between the government and the twenty-four larger generators.

In evaluating this matter, Velsicol did not believe that the cash-out offer made by the federal government was appropriate. Copies of enclosed corrrespondence reflect Velsicol's concerns regarding the accuracy of the government's allegations regarding Velsicol's involvement at the Seymour site and the fact that the settlement offer did not properly reflect that Velsicol had paid for the clean-up of that material when it entered into the August

1982, Chem-Dyne settlement agreement. Thus, the waste material was being "double-counted" by the government and Velsicol was being asked to pay the government twice for waste material for which the company had already been granted a release by the government. Velsicol was unsuccessful in its efforts to arrange a meeting with EPA headquarters and DOJ to discuss the inaccuracies in the waste volume being attributed to Velsicol and an appropriate settlement amount. Velsicol received no formal response from EPA to the points raised in its correspondence until it was served with the Second Amended Complaint in U.S. v. Seymour Recycling Corporation, et al. (Attachment E).

(9) Any recommendations Velsicol has for changing the administration of the Superfund law, and/or for amendments to the law itself.

The issue raised here is a complex one. To explore in some detail suggested changes in the administration and structure of the Superfund law would require a tome. This would be so, not because Velsicol has a great number of suggestions, but because it would be important to understand and to explain the significance and potential impact of such changes to all affected parties.

Velsicol believes that a serious deficiency of the current administration of the program is the lack of incentives for voluntary remedial efforts by potentially responsible parties. Rather, the administration seems to be promoting more litigation which both slows down the process of site clean-ups and diverts staff and financial resources from correcting the results of past practices and moving on to preventive measures.

Velsicol believes that EPA and DOJ are discouraging many potentially responsible parties from participating in settlements that would promote more site clean-ups at a much faster pace than at present. This discouragement is created by the federal government filing a complaint against a few "deep pockets" at a site on the theory that each of those few companies is jointly and severally liable for clean-up of the entire site. With such a litigation approach being utilized by the government, many potentially responsible parties believe they may be able to escape any liability whatsoever if they refuse to become involved in the settlement/negotiation process.

Velsicol is also concerned that the criteria being used by EPA to rank sites on the NPL are misleading and may be serving to divert attention and resources from more serious environmental problem areas. Velsicol strongly disagrees with EPA's position that it will not take into account voluntary clean-up efforts which are underway or completed in determining which sites should be included on the NPL. The inclusion of such sites on the list needlessly creates concern and fear on the part of persons residing near such sites. It also effectively lumps together in the public's mind the owner and operators of such sites who have spent vast sums on clean-up, along with those who have done nothing.

Velsicol believes that the conventional response from the public to an announcement that a site is on the NPL is: (1) the designated site is one of the "worst" in the country; (2) it represents an imminent hazard to the environment and/or public welfare; and, (3) no corrective work has been done or is scheduled in the immediate future and that federal and state action, including expenditures of funds, is essential. Velsicol believes that the NPL should represent the most hazardous sites at which little or nothing has been done and which should be targeted for effective action under Superfund.

If EPA chooses to insist in including on the NPL sites on which voluntary action is underway, it is suggested that the sites be categorized as follows:

Category 1: The orphan or uncontrolled sites on which no work has been done or planned. These sites should be rated in descending order on the basis of all data available.

Category 2: Those sites on which control work is in the planning stages and on which work is actually being performed. (The Marshall facility as well as the St. Louis site would probably fall into this category.)

Category 3: Those sites which have had control work completed and are being monitored. (Hardeman County and the Chattanooga sites would probably fall into this category.)

Category 4: Those sites which have been delisted or have been controlled such that monitoring is not needed (The golf course site would probably fall into this category).

To illustrate this point, enclosed is correspondence describing extensive clean-up efforts at three of Velsicol's sites (Marshall, Illinois; Toone [Hardeman County], Tennessee; and the golf course at St. Louis, Michigan) which had been included on the NPL (Attachment F). One of the sites, the golf course at St. Louis, Michigan, was included on the NPL even though the control program had been completed by Velsicol the previous year; no residual problems remained, and no monitoring was programmed or required by state and federal authorities. After negotiation with EPA this site was subsequently removed from the NPL. Velsicol believes that the NPL should be focused on getting past problems under control so that efforts can be put into positive prevention and maintenance. On the immediate horizon is the Hollywood Dump, Tennessee in which a cooperative effort involving EPA Region IV, the State of Tennessee, Shelby County. the City of Memphis and Velsicol representing the industrial potentially responsible parties, is being effectively addressed using the negotiations mode. The work on this site will commence immediately and should be completed within 1985.

Velsicol believes that it has learned a lot about the time and effort required to elevate environmental security within a corporation, including the critical selection and placement of personnel in key positions. None of this can be accomplished overnight. In improving one's operation, there must be an overall concept within the organization that all activities are to be performed according to high standards. Velsicol believes that it is important that business perceive an incentive to do this.

Velsicol's corporate mindset is to reduce and prevent risk to life and the environment. Human and environmental security must be assured. Business must be operated in such a way that it continues to serve the public without creating harm. As long as the opportunity is there and incentives are available, there is no question that industry can continue to move in this direction.

For example, Velsicol is pleased to acknowledge the recognition and encouragement it has received. In 1982, Velsicol received the prestigious Lammot DuPont Safety Award for having the best rate of reduction of injuries and occupational illnesses over a five-year period within its category in the chemical industry. In 1983, Velsicol again led all companies in its industry category but did not receive the award because of a policy of not issuing it to the same company two years consecutively. In 1984, Velsicol again received not only the DuPont award, but was also given the National Safety Council's highest tribute that an industrial firm can receive when it was presented with the Award of Honor for outstanding safety achievement. The significance of this tremendous three-year performance is the fact that Velsicol climbed to the top of the chemical industry during a period when the industry itself was ranked by the Safety Council as either number 1 or number 2 in safety performance of all 42 basic U.S. industries. This record is the best example of measured success of the priorities set by Velsicol just a few short years ago.

Velsicol believes that it has made much progress and that there is still much to learn. Velsicol is pleased to invite subcommittee members and staff to visit any Velsicol facility or site. Representatives of the Environmental Defense Fund and League of Women Voters have inspected Velsicol's plants and disposal sites and have met with Velsicol's environmental managers and senior company officers to discuss the company's operations. If the members of the subcommittee or its staff have particular issues regarding EPA's administration of Superfund, Velsicol's own environmental efforts, or areas of interest which they would like to discuss, Velsicol is pleased to respond.

LIST OF ATTACHMENTS

A	Memphis Environmental Center- General Memphis Environmental Center- Environmental Analytical Laboratory
B	Policy for Environmental Security Hazardous Waste Disposal Policy
C	Letter to John M. Rademacher from Dale S. Bryson, August 18, 1983
D	Letter to John M. Rademacher from John White, December 4, 1979 Letter to Eugene W. Fowinkle from John M. Rademacher, July 10, 1980
E	Letter to Kate Bouve from August G. Stroecker, August 12, 1982 Letter to Lawrence Kyte from John M. Rademacher, November 24, 1982 Letter to Rita Lavelle from John M. Rademacher, December 14, 1982
F	Letters (3) to Russell H. Wyer from John M. Rademacher, February 28, 1983

MEMPHIS ENVIRONMENTAL CENTER

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The Memphis Environmental Center (MEC) currently consists of five interacting groups, comprised of highly motivated positive thinking employees.

The following is a brief profile of the services provided by MEC.

I. RCRA/SUPERFUND

This group is responsible for ensuring that Velsicol is in compliance with all applicable RCRA and Superfund regulations. Also, this group examines and approves the capabilities and competence of waste disposal contractors and transporters before they can be considered for providing services to Velsicol.

The tool that Velsicol Chemical Corporation uses is the Environmental Audit. Regular inspections are made of the following:

Facility	Frequency
1. Plants	Semi-annual
2. Potential Vendors	As needed
3. Vendors	Semi-annual
4. Transporters	Annual
5. Formulators	Semi-annual
6. Warehouses	Semi-annual

Under Superfund, it is this group's responsibility and purpose to review and interpret the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (Superfund) - Insure compliance in specified areas of responsibility - meet with environmental agencies and operation personnel - assist in reviewing and interpreting CERCLA regulations and their potential effect on each site where Velsicol Chemical Corporation may be a Potential Responsible Party - and, where applicable, negotiate settlements and agreements on remedial investigations, feasibility studies and remedial actions with environmental agencies.

II. ENVIRONMENTAL COMPLIANCE

The primary responsibility of Environmental Compliance is to stay informed of present and upcoming EPA regulations that affect the operations of Velsicol Chemical Corporation. In conjunction with legal counsel, the group interprets the regulations under CWA, CAA, RCRA and Superfund so that Velsicol facilities meet the requirements and disseminates this information to plant Environmental Managers. Environmental Compliance is an integral part of Velsicol's environmental capital project planning activities and budgeting since these projects include those necessitated by regulations.

This group is responsible for overall compliance tracking of facility performance with respect to permits, spill reporting, Clean Water Act, Clean Air Act, Safe Drinking Water Act and their respective regulations.

Environmental Compliance is the primary contact and central clearing house for spills and releases to the environment from any of Velsicol Chemical Corporation's manufacturing or transport facilities. The basic function is to determine reportability of individual releases to the federal government required by any of five federal laws.

Environmental Compliance has the responsibility to:

- Assist Velsicol plant Environmental Managers in preparing permit applications for environmental and production facilities.
- Evaluate the need for permits and coordinate modifications to existing permits with plant Environmental Managers.
- Track compliance with all Velsicol environmental permits and assist plant Environmental Managers in correspondence and meetings with governmental agencies.
- Maintain complete reference files of all Velsicol air, water, soild waste permits and applications. Ensure conformity of what we have represented to the government in applications with actual physical facility configurations.

III. ENVIRONMENTAL ENGINEERING

This group provides the design, engineering and construction of both end-of-pipe treatment and in-plant point source reduction facilities to ensure maintenance of the environmental security of the corporation. This includes the continued maintenance of landfill sites, site closures, construction and start-up of systems for plants, and project cost information and planning. This group also works closely with the regulatory agencies for required permits for closures, capping, monitoring, etc. of sites.

Relative to the facilities environmental plan, Environmental Engineering has executed over $20,000,000 in projects over the last four years.

IV. ENVIRONMENTAL ANALYTICAL LABORATORY

The Environmental Analytical Laboratory provides analytical support of unquestionable quality for the other groups within the Memphis Environmental Center.

During the decade of the Seventies, the growing emphasis on environmental improvements furnished the impetus for increased numbers of samples to be taken and analyzed for an ever increasing number of compounds at continually decreasing levels of detection. While several years were necessary to develop, manufacture, and market the analytical apparatus required to meet these increasing rigorous analytical demands, it became apparent to those working in the field of low level analysis that analyses carried out at the part per billion or part per trillion level require a completely different approach than those at even the part per million or higher levels.

As detection levels decreased, Velsicol, like many others, became aware that accurate analyses at the low part per billion level could not be obtained in plant laboratories associated with production, sampling, and analysis of the same compounds in their concentrated forms. At the same time, experience in sending environmental samples to outside commercial laboratories for analysis produced so many variable results, particularly for duplicate samples submitted to different laboratories, that Velsicol was led to the conclusion that the only way to assure itself of reliable results was to establish its own laboratory where all aspects of quality assurance, accuracy, and reliability could be controlled rigidly.

As a result, the Memphis Environmental Analytical Laboratory was established with the directive that it was to be second to none in the country. In addition to the operation under applicable Good Laboratory Practices regulations, a unique external quality assurance program was imposed which continually measures the precision and accuracy of each chemist in analyzing each of the normal environmental parameters. To our knowledge no other laboratory has as complete a quality assurance program. Up to 20% of total analytical laboratory time is devoted to this program.

Since even the best analysis can be no better than the sample analyzed, there is a major effort to insure that all samples accurately represent the actual environment being monitored. A manual covering state-of-the-art procedures and techniques to be used in sampling air, water, and soils was composed and issued by the Environmental Analytical Laboratory. Copies are issued to all plant environmental managers who are responsible for strict adherence to all details whenever samples are to be taken. The manual covers all aspects of sampling such as selection of proper containers, cleaning of containers, preservation of samples, storage and shipping. To provide quality assurance for the sampling program, random on-site audits are made by chemists from the laboratory who are experienced in all phases of sampling.

The net result of these efforts has been that in its short three years of existence, this laboratory has become recognized and acknowledged by both the Environmental Protection Agency and various state regulatory agencies as one of the most reliable environmental laboratories in the country.

V. ENVIRONMENTAL SERVICES

The prime function of Environmental Services is to commercialize the knowledge, skills and technology developed by Velsicol in the environmental area. At the present time, the greatest effort is being directed towards the commercialization of the technology developed by Velsicol and Bituminous Materials, Inc. to stabilize the 5/6 Pond at Velsicol's Marshall, Illinois plant. Time and resources are also being expended to market the capabilities of Memphis Environmental Center's Analytical Laboratory.

Environmental Services requires the input from groups within and outside of Velsicol.

- The services of MEC's Environmental Analytical Laboratory are required for Quality Control of samples taken from sites at which Velsicol has involvement. The Environmental Analytical Laboratory also serves as a source for information in developing sampling protocol.
- The services of the Legal Department are required to determine if the off-site projects are being managed in accordance with the applicable laws and regulations, thus minimizing the possibility of future litigation.
- Input from Environmental Engineering is required to determine the feasibility, cost and effectiveness of any remedial measures proposed for off-site environmental projects.
- Consulting engineering firms are employed for off-site projects when it is determined that in-house personnel can not readily evaluate an environmental problem. For example, a hydrogeological evaluation of a site would require the services of a consultant.
- RCRA/Superfund provides the necessary input to resolve questions that may arise concerning its particular area of expertise. When questions concerning Superfund and RCRA arise, the RCRA/Superfund group provides the input necessary to resolve the questions. RCRA/Superfund may also be asked to dispose of waste that is located on sites in which Velsicol is involved.
- Depending on the site, Environmental Engineering may be required to work with representatives of other industries involved with the site.

It is the responsibility of Environmental Services to coordinate the input from the groups mentioned above and to work with governmental agencies and other industries to insure that questions concerning the site being worked on are resolved in a timely manner, in accordance with applicable laws and regulations with the minimum financial impact on Velsicol.

Memphis Environmental Center

Environmental Analytical Laboratory

ANALYTICAL LABORATORY

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MEMPHIS ENVIRONMENTAL CENTER
ANALYTICAL LABORATORY

1. POLICIES

(1) Confidentiality

Reports are submitted to clients on a confidential basis. No reference to the work, the results, or to the client company in any form of advertising, news release, or other public announcement may be made without written authorization by the client.

(2) Pricing

Fees charged for services listed in the following pages are available upon request. Fees quoted will be dependent on a number of factors, including:

- Number of samples submitted
- Analyses to be performed
- Method modification required
- Sufficiency of information provided by the client to facilitate analysis and interpretation
- "Turnaround" time required.

Pricing information can be obtained by calling or writing:

Memphis Environmental Center, Suite 100,
2603 Corporate Avenue East, Memphis,
Tennessee 38132, (901) 345-1788

(3) Methods

All analyses are performed by official and approved methods and in accordance with Good Laboratory Practices.

2. SUBMISSION OF SAMPLES

Suggestions for Submission of Samples for analytical evaluation are as follows:

- Provide detailed, written instructions concerning the work to be done
- Provide estimates of sample contents–knowledge of expected levels substantially expedite service
- Provide storage and stability information, if available
- Package and ship samples properly–sample shipment kits are available from the Memphis Environmental Center
- Samples should be sent to:

Memphis Environmental Center, Suite 100,
2603 Corporate Avenue East, Memphis,
Tennessee 38132

3. OBJECTIVE OF THE LABORATORY

The objective of the Memphis Environmental Center Anayltical Laboratory is to provide clients with the most accurate analytical information obtainable and at an economical cost. In order to attain this objective:

- The laboratory will be staffed at all times with well trained experienced residue analysts.
- The analytical equipment will be the best available and will be maintained and periodically upgraded to achieve these goals.
- All samples and data will be obtained and stored in a manner adequate for potential legal purposes.
- The laboratory will be operated under the Good Laboratory Practice (GLP) regulations as applicable.
- All normal laboratory safety practices will be followed to protect both employees and the environment.

4. LABORATORY SERVICES AND QUALIFICATIONS

The Environmental Analytical Laboratory provides a full range of services in environmental analyses. The laboratory has the qualified and experienced personnel, analytical capabilities, state-of-the-art analytical instrumentation, and the comprehensive quality assurance/quality control program required to meet the widely varying and demanding needs of industry and government.

(1) Analytical Capabilities

The analytical capabilities of the Environmental Analytical Laboratory include:

- Analysis of conventional water/wastewater parameters, including but not limited to TOC, alkalinity; chloride; cyanide; fluoride; phenols; sulfate; methylene blue active substances; conductance; hardness; residue-filterable, non-filterable, total volatile, and settleable matter; and turbidity.
- Analysis of elements found in wastewater treatment plant effluents and environmental or industrial samples, including but not limited to antimony, arsenic, barium, bismuth, boron, cadmium, chromium, cobalt, copper, iron, lead, lithium, magnesium, manganese, mercury, molybdenum, nickel, selenium, silver, thallium, tin, vanadium, and zinc.
- Analysis of trace toxic organic compounds, including pesticides and herbicides, PCBs, dioxin, halomethanes, phenols, organic acids, purgeable organic components in water, hazardous organic vapors, and priority pollutants.
- EP "Toxicity" testing.
- Evaluation of NPDES permit requirements.

(2) Analytical Instrumentation

To support laboratory capabilities and to ensure accurate and comprehensive analytical services, the laboratory instrumentation in the Environental Analytical Laboratory is the most up-to-date on the market today. The major analytical instruments are described in the following paragraphs.

- **Gas Chromatograph/Mass Spectrometer/ Data System (GC/MS/DS)–HP 5985; HP 5993; HP 5995 (Two)**
- The GC/MS's are capable of detecting and identifying trace levels of organic compounds. The microprocessor-controlled GC's accept both capillary and packed columns. The capillary column may be operated in the "splitless" or split modes.
- The MS's have EI/CI/NCI with total and selected ion monitoring capability; analyzer electronics for 1000-amu operation; and a solid sample probe.
- **Gas Chromatographs–HP 5880 (Four); Varian 3700**

  The GC/s are used for separating and detecting organic compounds. Specific detectors permit identification of specific classes of compounds. Microprocessor-controlled units allow both isothermal operation and multiple temperature-grammed operation with flame ionization, electron capture, nitrogen-phosphorous, Hall, and photo-ionization detectors. The microprocessors accept both capillary and packed columns with the capillary columns having the ability to be operated in either the "splitless or split modes".

- **Liquid Chromatograph–Varian 5000**

  The liquid chromatograph is capable of separating high-molecular weight compounds and polar compounds which are not easily separated by conventional GC techniques. The instrument consists of a microprocessor-controlled dual pump, solvent delivery system; a column oven; a variable wavelength detector; an autosample injector; and various sample loops. Also included is an assembly for interfacing the instrument with an HP 3390A integrator and an HP-85 data system for collecting and reporting data.

- **Atomic Absorption Spectrophotometer–Varian 775**

  This instrument permits analysis of 50 different metals through the use of hollow cathode and electrodeless lamps. The spectrophotometer contains a microprocessor-controlled, double-beam photometer; a wide-range optical system; a self-contained electronic digital readout in emission intensity, absorbance, or concentration; and an auto sampler.

- **Inductively Coupled Argon Plasma Emission Spectrophotometer–IL (Instrumentation Laboratory) Plasma 100**

  This is an emission spectrophotometer utilizing an inductively-coupled plasma (ICP) source for determining up to seventy elements in a wide variety of samples. The elements are determined sequentially under microcomputer control and read out on a printer and video display. Up to 16 elements can be determined on a single sample within two minutes.

The instrument is completely automated and includes an autosampler.

- **Double-Beam Scanning Ultraviolet-Visible Spectrophotometer–Cary 219**

  The spectrophotometer is used to analyze inorganic species, such as phenols, cyanides, and surfactants. It has a wavelength range from 200 to 900 nm, an absorbance range from 0.1 to 2A, a transmittance range from 0 to 100% T.

- **Total Organic Carbon Analyzer–Beckman Model 915A**

  The analyzer uses the combustion/infrared measurement technique. The total organic carbon in a sample is determined by measuring the total carbon content of water and the total inorganic content. The analyzer has a high sensitivity (5 ppm minimum detection limit).

- **Miscellaneous Equipment**

  In addition to the major analytical equipment listed, the Environmental Analytical Laboratory has the necessary chemicals and apparatus to perform all wet chemical analytical tests. Other equipment includes a Mettler Semi-Micro-Balance model HL32 with readout to 0.1 mg; a Photovolt aquatester; and an Orion Research, Inc. Model 901 specific ion meter; a Corning Mega-Pure water purification system; a Perkin Elmer 283B Infrared Spectrophotometer; a CDS 320 Volatile Concentrator; and a YSI Specific Conductivity Instrument. Equipment is also available for extracting and concentrating trace organic substances from liquid and solid matrices.

(3) Personnel

Environmental Laboratory personnel are experienced in: environmental sampling; organic and inorganic instrumental analysis; wastewater treatment; and analytical methods development. These personnel are well qualified to conduct various environmental analyses, including the following:

- Environmental monitoring
- Analysis of priority pollutants
- Fate of hazardous chemicals at disposal sites
- Determination of occupational exposure to organic vapors in the work place
- Monitoring of chemical spills
- Determination of pesticide residues
- Analysis of organic pollutants in wastewater streams
- Development and validation of new analytical methods.

5. INTERNAL QUALITY ASSURANCE

Quality assurance is necessary to maintain accuracy and comparability of data over periods of time. The chief objective of the quality assurance program is to validate results obtained by the laboratory in order to assure accurate analytical results upon which management decisions can be made concerning environmental expenditures. The program is carried out by means of written protocols specifying the way:

- Samples are taken, preserved, shipped and handled
- Records are kept
- Samples are analyzed
- Data is recorded, used and stored
- Reports are prepared and issued.

Rigid compliance to the quality assurance program is the "reason de etre" of the Environmental Analytical Laboratory. All laboratory personnel are required to adhere to the spirit as well as the letter of the quality assurance program in all work.

(1) Sample Handling

If needed, the Memphis Environmental Center will provide instructions for the proper collection and shipment of samples to the laboratory to assure compliance with an approved protocol.

The samples shipped to the laboratory are received by the Sample Custodian, assigned to an analyst, and stored under refrigeration until analyzed. Aqueous samples are stored in a refrigerator at 4°C. Soil and any samples not subject to damage by freezing are kept in a freezer at -23°C.

Samples are stored inside the locked laboratory, and all non-laboratory personnel must sign in a log book before entering. After analysis, any unused samples are stored at least 30 days after submission of final analytical report.

(2) Reference Standards

All reference standards are kept in a separate locked room isolated from the laboratory with a separate air-conditioning system. No organic chemicals are allowed in the laboratory at any time except in the form of solvent diluted standards ready for GC injection. Only authorized personnel have access to the reference standard room. The reference standards are arranged in numerical order and a card index is maintained to assist in location of individual standards.

Except for a few commercially obtained reference standards purchased with guaranteed assay, all reference standards are obtained from Velsicol Chemical Corporation's Reference Standard Section, R&D. Each vial of reference standard has on its label the certified assay, analytical method and lot number.

(3) Data Storage

All data, instrumental and otherwise, obtained during analysis of a sample is included in the permanent master file in packets labelled with the appropriate identification. All individual chemists' data is recorded in research type notebooks, signed and witnessed. Copies of all notebook pages are included in the permanent master file. All notebooks are microfilmed when full for permanent archival.

All instrumental analytical data obtained as hard copy is included in the permanent master file. All raw data recorded in GC/MS data systems is retained for at least 30 days after submission of final analytical report and then purged as necessary. When required, GC/MS data can be submitted on tape in EPA format.

6. EXTERNAL QUALITY ASSURANCE

(1) Objective

The objective of the external quality assurance program is to ensure the continuing proficiency of each chemist and to provide senior management with a continuous evaluation of both chemists and the laboratory as a whole. In order to meet this objective, 25 percent of productive lab hours is devoted to external quality assurance programs.

(2) Description and Design of Programs

The Environmental Analytical Laboratory currently operates under two external quality assurance programs:

- UBTL Division of the University of Utah Research Institute
- Environmental Protection Agency Check Sample Program

1. UBTL, Division of the University of Utah Research Institute

This external quality assurance program is executed through contract with UBTL, a Division of the University of Utah Research Institute. It is a statistically designed series of samples assigned to each chemist at biweekly intervals. The samples may be water, fortified beef tallow, or simulated air filters. Each sample may contain from two to nine parameters. The results of the analyses are reported for duplicate samples with three injections/sample. Each sample set is reported by the laboratory manager to the Corporate Quality Assurance Committee Chairman who compares the results with theoretical values given to him by UBTL. UBTL computes a control chart for each chemist.

2. Environmental Protection Agency Check Sample Program

The Environmental Analytical Laboratory participates in the Environmental Protection Agency Quality Control Check Sample Program. Check samples are furnished by the EPA to interested governmental, industrial, commercial and private laboratories for use as secondary checks on their in-house laboratory quality control programs. These concentrates with true value sheets are intended as independent measures of analytical technique, and performance, not as replacements for the standards, replicates or spike samples run routinely as part of the laboratory's quality control program.

Velsicol Chemical Corporation Environmental Health and Hygiene Policy

As a responsible manufacturer and marketer of a variety of agricultural and specialty chemicals, Velsicol Chemical Corporation's plants, laboratories and offices shall be maintained as clean, secure and healthful places of employment. Also, appropriate measures will be taken to make our operations environmentally secure.

At all times, Velsicol's facilities shall be designed and operated in compliance with the spirit and letter of federal, state and local occupational health and hygiene regulations.

Velsicol acknowledges and shall satisfy its responsibility to provide promptly current, comprehensive information on potential adverse health effects and appropriate handling procedures for chemicals handled by any individual making, distributing, using, or disposing of our products.

It is a fundamental and non-compromising responsibility of all Velsicol employees to make the health and safety of fellow human beings a continuing daily and hourly concern. This responsibility must be accepted by each one who conducts the affairs of the corporation, no matter in which capacity he or she may function.

A goal of Velsicol is to achieve and maintain a corporate occupational health and hygiene program which is a model for the chemical industry.

Michael Moskow

Michael H. Moskow
President and Chief Executive Officer

John M. Rademacher

John M. Rademacher
Vice President, Environmental,
Health & Regulatory Affairs

Vernon J Baarman

Vernon J. Baarman
Vice President, Manufacturing

Velsicol Chemical Corporation
341 East Ohio Street
Chicago, Illinois 60611

VELSICOL CHEMICAL CORPORATION
CORPORATE STANDARD PROCEDURE

SUBJECT: HAZARDOUS WASTE DISPOSAL POLICY	NUMBER: 90.20
PRIMARY REVIEWER: MANAGER RCRA/SUPERFUND	EFFECTIVE: 3/30/84
SECONDARY REVIEWER: ASSISTANT DIRECTOR OF PURCHASING	SUPERSEDES: 7/1/83
APPROVED BY: V.P. ENVIRONMENTAL, HEALTH & REGULATORY AFFAIRS	PAGE 1 OF 8
REFERENCE:	DISTRIBUTION LIST: A,B,C,D,E

I. PURPOSE

This procedure defines the action, responsibilities and authorization levels that are necessary to secure appropriate contracts between the Velsicol Chemical Corporation and contractors for disposal of solid and liquid hazardous waste materials as defined in Section 3001 of the Resource Conservation and Recovery Act of 1976 (PL94-580) (RCRA), as amended in the Code of Federal Regulations 40, Subchapter I- Solid Wastes, Parts 260 through 265.

II. SCOPE

All solid and liquid hazardous waste, generated by the manufacturing processes and operations, that require disposal at off-plant sites by a vendor shall be so disposed of only after a contract has been agreed to and signed by officers of Velsicol and a waste disposal contractor approved by legislative environmental agencies. Exceptions to this procedure can only be made by written authorization of the Vice President-Environmental, Health & Regulatory Affairs.

III. LOCATIONS

All Velsicol Chemical Corporation facilities.

IV. DEFINITIONS

HAZARDOUS WASTE: For detailed definition see, RCRA, CFR 40, Part 261. Simply stated Hazardous Waste means any waste or combination of wastes which pose a substantial present or potential hazard to human health or living organisms because such wastes are nondegradable or persistent in nature or because they can be biologically magnified, or because they can be lethal, or because they may otherwise cause or tend to cause detrimental cumulative effects.

NOTE: The above definition includes ignitable, corrosive, reactive, EP toxic, acute hazardous and/or toxic waste.

CONTRACTOR: (Re: Vendor, Disposer) Corporation contracted to dispose of hazardous waste approved by the Environmental Manager of RCRA/Superfund.

OFFICER: Chairman of the Board, President, or Vice-President of the contracted corporation and/or Velsicol.

C. The Corporate Purchasing Department or its designated plant purchasing representative shall negotiate all waste disposal contracts with approved contractors and transporters only. The Corporate Purchasing Department will distribute copies of all executed contract agreements and associated Schedule A's (Exhibit I, A & B) all permits to the following:

1. Legal Department
2. Environmental Manager - RCRA/Superfund
3. Velsicol Chemical Corporation Facility served by the contract agreement

D. All contract agreements to be examined, approved and contract number assigned by the Legal Department before final acceptance.

E. All contract agreements are be executed by the Vice President of Environmental, Health and Regulatory Affairs and an authorized officer of the disposal company.

F. Summary of Responsibilities (Details in Article VIII)

Generator (Velsicol Chemical Corporation facility) Provide the following information (Schedule A form required)

VCC I.D. #
Process - Product Name
Name of Waste
Composition of waste
% Range - Analysis may be required
Physical Properties
Hazardous Properties
Quantity to be Disposed-Frequency of Disposal
Transporter and Shipping Information
Packaging in Compliance with DOT regulations
Special Conditions
Any testing or samples that may be required by contractor or agency

Corporate Environmental Manager -RCRA/Superfund

Determine if Material is Hazardous - Assign VCC - ID Number

Hazardous Environmental Properties
Special Conditions
Select Contractor/Disposal Method
Acceptance

Corporate Health & Hygiene Department
Hazardous Health Properties

CONTRACTOR - TRANSPORTER (Environmental Manager, RCRA/Superfund)
Waste Disposer and EPA I.D. Number, Transporter, EPA I.D. Number and type of vehicle used.

PERMIT NUMBER (Purchasing Department)
Number assigned by Federal, State or Local agency allowing (or accepting) the specific hazardous waste to be disposed at the contractor's site.

VCC I.D. NUMBER (Environmental Manager, RCRA/Superfund)
Velsicol Chemical Corporation Identification Number assigned to each plant's waste streams.

PROCESS (Generator)
Name of process that generates waste.

NAME OF WASTE (Generator)
Common nomenclature describing waste stream.

COMPOSITION OF WASTE (Generator)
Chemical name of components of waste.

HAZARDOUS OR NON-HAZARDOUS (Environmental Manger, RCRA/Superfund)
Determine if material qualifies under the definition of Hazardous Waste.

% RANGE (Generator)
Maximum & Minimum percentage of each chemical component.

PHYSICAL PROPERITES (Generator)
Organic/inorganic - check appropriate box(s)
Density - #/gal, #/cu. ft., etc.
Flash Point: Close cup F, (per Title 49 DOT)
PH (corrosive) (per Title 49 DOT)
Physical State @ 70 F, Liquid, solid, semi-solid, etc.
Phase/layering - Single, multi, none
Viscosity - Low, medium, high
% Halide - Chloride or Bromide - check appropriate box and provide
% Halide range
Metals - Metal content
BTU per pound
Ash Content
% Sulfur
Reactive - Reactivity to water, air, etc.
Others - Any physical properties that may be pertinent to the transportation or disposal of the waste.

HAZARDOUS PROPERTIES
This section will come from the (1) Health & Hygiene Department. (2)

VIII. OFF SITE HAZARDOUS MATERIALS - All hazardous materials that potentially may be disposed of as hazardous waste and are stored at a VCC facility (See definition) that does not have a current USEPA identification number, will be shipped to the nearest facility that:

1. Has a current USEPA ID number

2. Manufactures and stores compatible materials

The materials will be evaluated to determine proper disposition to either:

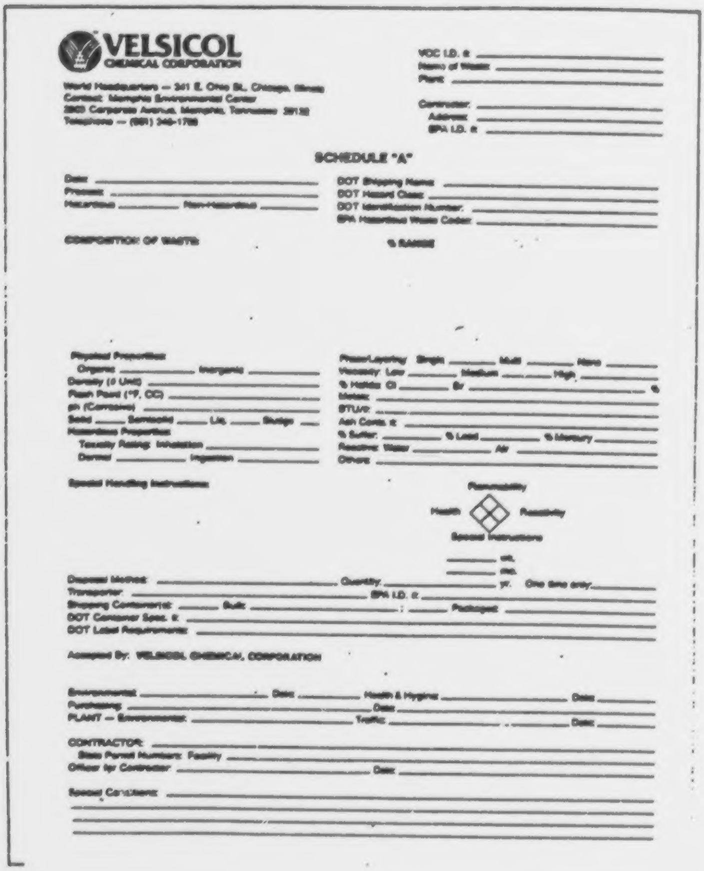
	Disposition	Responsibility
1.	Resell product	VCC Sales Department
2.	Rework	VCC Manufacturing Department
3.	Return to Vendor	VCC Purchasing Department
4.	Sell R/M or Intermediate	VCC Purchasing-Investment Recovery
5.	Disposal	VCC Environmental Department (RCRA/Superfund)

IX. ACCREDIATION OF TRANSPORTATION AND DISPOSAL WASTES

It is important that accurate records be kept concerning the transport of wastes from a Velsicol site to final disposal of the waste material. In order to provide the necessary certification as to transport and disposal of wastes, and proper recording of same, a manifest system will be used. The Velsicol manifest (record form) is described in detail in Corporate Policy 90.21 - Hazardous Waste Manifest System. It will be the responsibility of the management of each Velsicol facility generating the waste to implement the use of the manifest (record form) and maintain a file of completed forms describing each shipment and disposal of waste material form the facility. In cases where a manifest system has been adopted by a State Agency, the manifest forms required by that state shall be used in addition to the form in Velsicol Chemical Corporation's Corporate Policy 90.21. No invoice will be honored unless accompanied by a completed manifest indicating that the waste has been disposed. This policy can only be overruled by the Vice President of Environmental, Health & Regulatory Affairs (in writing). Manifest copies must be retained for three years.

PAGE 1 OF 4	STANDARD PROCEDURE NO. 90.20	EFFECTIVE 3/30/84	SUPERSEDES 7/1/83

EXHIBIT I-g



VELSICOL
CHEMICAL CORPORATION

World Headquarters — 341 E. Ohio St., Chicago, Illinois
Contact: Memphis Environmental Center
2903 Corporate Avenue, Memphis, Tennessee 38132
Telephone — (901) 345-1780

VCC I.D. # ____
Name of Waste: ____
Plant: ____

Contractor: ____
Address: ____
EPA I.D. # ____

SCHEDULE "A"

Date: ____
Process: ____
Hazardous ____ Non-Hazardous ____

DOT Shipping Name: ____
DOT Hazard Class: ____
DOT Identification Number: ____
EPA Hazardous Waste Codes: ____

COMPOSITION OF WASTE: % RANGE

Physical Properties:
Organic ____ Inorganic ____
Density (# Unit) ____
Flash Point (°F, CC) ____
pH (Corrosive) ____
Solid ____ Semisolid ____ Liq. ____ Sludge ____
Hazardous Properties:
Toxicity Rating: Inhalation ____
Dermal ____ Ingestion ____

Phase/Layering: Single ____ Multi ____ None ____
Viscosity: Low ____ Medium ____ High ____
% Halides: Cl ____ Br ____ %
Metals: ____
BTU/#: ____
Ash Conts. #: ____
% Sulfur: ____ % Lead ____ % Mercury ____
Reactive: Water ____ Air ____
Others: ____

Special Handling Instructions:

Flammability
Health Reactivity
Special Instructions

____ wk.
____ mo.

Disposal Method: ____ Quantity ____ yr. One time only ____
Transporter: ____ EPA I.D. # ____
Shipping Container(s): ____ Bulk: ____ ; ____ Packaged: ____
DOT Container Spec. #: ____
DOT Label Requirements: ____

Accepted By: VELSICOL CHEMICAL CORPORATION

Environmental: ____ Date: ____ Health & Hygiene: ____ Date: ____
Purchasing: ____ Date: ____
PLANT — Environmental: ____ Traffic: ____ Date: ____

CONTRACTOR: ____
State Permit Numbers: Facility ____
Officer for Contractor: ____ Date: ____

Special Conditions: ____

EXHIBIT II

VELSICOL CHEMICAL CORPORATION

MONTHLY SUMMARY OF HAZARDOUS WASTE ACTIVITIES

PLANT

PERIOD TO

SAMPLE FORM

	ACC CD NO	MANIFEST NUMBER	VENDOR	DATE SHIPPED	QUANTITY	UNIT	DATE DISPOSED	INVOICE NUMBER	COST OF DISPOSAL	COST OF TRANSPORT.	TOTAL $	COMMENTS
1												
2												
3												
4												
5												
6												
7												
8												
9												
10												
11												
12												
13												
14												
15												
16												
			TOTAL			# GAL PTS						

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION V
230 SOUTH DEARBORN ST
CHICAGO, ILLINOIS 60604

AUG 2 3 1983

AUG 1 8 1983

REPLY TO ATTENTION OF:
5W

Jack Rademacher, Vice President
Environmental, Health and Regulatory Affairs
Velsicol Chemical Corporation
341 East Ohio Street
Chicago, Illinois 60611

Dear Mr. Rademacher:

You requested I provide you with my observations and opinions on Velsicol's approach to the settlement negotiations associated with the Company's facilities in the St. Louis, Michigan area. My thoughts follow.

Negotiations between the Company, the Federal government and the State of Michigan had an early focus on the clean-up and containment program at the main plant site in St. Louis, Michigan. As negotiations progressed, additional contamination problems arose - at the creamery warehouse, the golf course, the Pine River and Gratiot County. The negotiations were extremely complex due to the number of parties involved, the contaminations involved, the physical location of the contaminated areas and the fact that we were on the cutting edge of implementing new laws which means there is great uncertainty to all parties.

As you are well aware, the negotiation process that led to the complete settlement was lengthy. Much to the Company's credit you always presented technically sound proposals as alternatives to consider on the various control programs. We had honest differences of opinion on some of them. Those honest differences were in part due to the new ground we all were breaking on hazardous waste control and the grey areas associated with implementing new statutes. Throughout the process, Velsicol and its representatives were thorough, very responsive and approached problems with the attitude of trying to reach agreement on the most effective solution. Environmental consequences were key factors you considered in your proposals. When the need arose for additional data, you set about gathering technical facts and in a number of instances you went the extra mile to gather the needed data. The data were readily shared with the regulatory agencies so that appropriate decisions could be made. If disputes arose between the regulatory agencies and yourself, it was always possible to address the issue and try to resolve it in a positive, expeditious fashion. This is not to imply that you capitulated to the regulatory agencies position on issues. You were "a worthy opponent" and represented your position well.

I have personally handled a number of negotiations on pollution control cases and have been associated with a much larger number. The common pattern of events is such that clean-up activities generally do not start until a total and final agreement is reached. To Velsicol's great credit, you did not follow that pattern. On numerous occasions throughout the long negotiation process, you proceeded to take agreed-to corrective actions immediately.

Examples of this are: the creamery warehouse clean-up, the golf course clean-up and restoration, and the plant site interim control measures. Because of your timely and complete actions, the environment greatly benefited.

On July 21, I visited the plant site to view first hand how the consent decree required encapsulation program was progressing. It was obvious to me that the same philosophy and practices continue in the clean-up as the did during the negotation. It is clear that you are taking the extra steps to ensure that a first class job is completed. Extra attention is being paid to what some would consider "details". An example is the capability of constant communications to all key workmen which means instant response to problems that arise. Another example is the extra rounds of road sweeping to guarantee that dust is kept to an absolute minimum in the area affected. From my discussion with the city manager in St. Louis, it was obvious that the City considers you as a "fine corporate citizen" due to your responsiveness to the citizens concerns in this containment effort.

In summary, I feel Velsicol Chemical Corporation has demonstrated what I consider a responsible corporate attitude to the clean-up of the environmental problems in Michigan. You are to be commended for having your actions speak louder than words.

Very truly yours,

Dale S Bryson

Dale S. Bryson, Deputy Director
Water Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IV
345 COURTLAND STREET
ATLANTA, GEORGIA 30308

DEC 4 1979

Re: 4E

HAND DELIVERED

Mr. John M. Rademacher, Vice President
Environmental, Health and Regulatory Affairs
Velsicol Chemical Corporation
341 East Ohio Street
Chicago, Illinois 60611

Dear Mr. Rademacher:

This letter reduces to writing the current position of this agency with respect to Velsicol Chemical Corporation's commitment to voluntarily secure the company's Chattanooga, Tennessee residue disposal site in order to eliminate any possible imminent and substantial endangerment to either health or the environment which may result from the site.

It is this agency's understanding that Velsicol will implement the program set out below which is intended to prevent continued contamination by Velsicol's residue disposal site.

In consideration for such implementation, this agency will take no legal action against Velsicol for this site except for failure to adhere to the terms of the program unless this agency determines that an imminent and substantial endangerment to health or the environment exists irrespective of the implementation of the program. It is further understood that Velsicol, by January 15, 1980, shall submit to EPA for approval a detailed plan for monitoring the environmental effects of the disposal site. This agency expects to provide such approval or comments within two weeks of receipt of the plan. This plan shall describe the location of the monitoring wells and the parameters to be analyzed for purposes of monitoring groundwater levels and quality before and after installation of containment measures. All work shall be performed by Velsicol with the exception of any such additional sampling and analyses desired to be carried out by this agency. This agency understands that it shall have access to Velsicol's property at any reasonable time for purposes of sampling, inspection, or any other regulatory activities.

It is our understanding that, assuming it is possible for this agency to approve the monitoring program in a timely manner, drilling and analyses will commence by February 1, 1980, and that Velsicol will, by March 31, 1980, submit for this agency's approval a detailed engineering plan and schedule for preventing further contamination of the environment by the disposal site. On the basis of best engineering judgment, Velsicol shall include in this plan a site maintenance scheme and a full detailed description of groundwater levels and quality which may be expected after implementation of containment measures. It is further expected that, within six (6) months of the time Velsicol receives this agency's approval of such plan, assuming such approval is provided sufficiently soon in the construction season that the work can be completed, Velsicol shall complete construction of all containment measures described in the EPA-approved detailed engineering plan. These measures must include an environmentally appropriate cap which will, at a minimum, cover (1) that entire area of the disposal site and wooded area immediately north of the site which is contained within the 685-foot contour, and (2) that entire easternmost area of the disposal site which is contained within the 685-foot contour and the existing drainage/interceptor ditch. The southern limit of the cap area shall be determined so as to ensure maximum effectiveness with regard to containment of the easternmost disposal pits.

Within the same time frame established according to the preceding paragraph, it is also expected that any further control measures for seeps which are, or may be, located at the disposal site will be completed. These control measures are to be adequately described in the above-referenced detailed engineering plan.

Appropriate progress reports of all past activities and projected major activities connected with this program shall be submitted to this agency by Velsicol commencing on February 1, 1980, and shall be submitted by the first of each month thereafter until completion of the containment program.

In order to determine the effectiveness of the implemented containment plan and further define the monitoring program, Velsicol will monitor selected test wells on a bi-monthly basis for a minimum period of one year after completing implementation of the plan. At the end of that time, or whenever appropriate prior to that time, an evaluation will be made by each party as to the efficacy of the system in place and a determination made as to any additional controls which may be appropriate, including an acceptable monitoring program. Such additional controls as may be determined as necessary, if any, including monitoring, shall be installed or operated consistent with an agreed to schedule developed at that time.

You must realize that your concurrence in this understanding does not amount to a determination by this agency that the program outlined in this letter will prevent the Chattanooga residue disposal site from causing an imminent and substantial endangerment to health or the environment in the future. Moreover, this understanding does not amount to a waiver by EPA of its responsibility to take whatever action is necessary to otherwise prevent or mitigate any imminent and substantial endangerment to health or the environment, in the event of the receipt of information by this agency that an endangerment to health or the environment exists irrespective of the implementation of your program.

Velsicol shall submit to this agency such documentation to obligate the Velsicol Chemical Corporation to undertake the actions necessary to effectuate this understanding. The documentation shall be submitted within 30 days of receipt of this letter.

This agency appreciates the opportunity to work with you in the manner that we have over the recent past in order to protect and enhance the environment.

Sincerely yours,

John C. White
John C. White
Regional Administrator

VELSICOL CHEMICAL CORPORATION

341 EAST OHIO STREET • CHICAGO, ILLINOIS 60611 • 312/670-4520

John M. Rademacher
Vice President
Environmental, Health & Regulatory Affairs

July 10, 1980

The Honorable Eugene W. Fowinkle, M.D.
Commissioner, Department of Public Health
Cordell Hull Building
Nashville, Tennessee 37219

Dear Commissioner Fowinkle:

Velsicol's management, its consultants and company representatives have worked closely with you and your very capable staff over the last several months in an effort to resolve the difficult questions of an appropriate technical approach for the program to control the Hardeman County Farm landfill site.

I propose, subject to the Velsicol Board of Directors' approval, to implement the program set forth below to protect against and prevent contamination by the former residue disposal site at Hardeman County. However, approval shall be contingent upon a simultaneous exchange of this letter and a letter of agreement from the State of Tennessee, detailing the State's concurrence and assurance that the program is acceptable and that the State of Tennessee will take no legal action against Velsicol for this site except for failure to comply with applicable provisions of the Tennessee Air Quality Act, Water Quality Control and Solid Waste Disposal Acts or failure to adhere to the terms of the specific program.

Velsicol has submitted today, for approval by Tennessee a detailed monitoring procedure for the disposal site.

Velsicol will submit copies of the clay analysis within two days of securing a contracted source.

The program will consist of an environmentally appropriate cap over the former residue disposal site. Velsicol will submit for approval by Tennessee detailed engineering plans and specifications describing this cap by July 15, 1980.

Velsicol will submit progress reports covering all major activities connected with this construction program to Tennessee commencing on August 1, 1980, and on the first of each month thereafter until completion of the program.

Velsicol at this point has a fixed price contract proposal with a reputable contractor and, assuming no new hurdles, will initiate work on the cap between August 1, 1980, and August 15, 1980, contractor set-up time being the controlling factor. Construction is expected to be completed during the 1980 construction season, subject to events beyond Velsicol's control, and assuming Velsicol receives timely State approval of plans, specifications, monitoring procedure, and approval of any permits, licenses, etc. which may be required.

Velsicol agrees after three years of monitoring that an evaluation of control measures and monitoring will be conducted.

As noted above, this proposal is made to the State subject to ratification by Velsicol's Board of Directors. Accordingly, Velsicol agrees to submit to Tennessee in an expeditious manner such documentation as may be reasonably necessary to obligate Velsicol to undertake the actions necessary to effectuate this proposal.

With the exchange of acceptable letters referred to above, Velsicol proposes to commence site preparation work for installation of the cap even prior to Velsicol Board of Directors' approval. Assuming no new hurdles, this work could commence as early as the week of July 14, 1980.

If this proposal is acceptable to the State of Tennessee, Velsicol believes the agreed upon approach should be brought to the immediate attention of the Region IV Office, U.S. Environmental Protection Agency and other appropriate Federal authorities by the State, and that the federal government should be requested to refrain from any action not in consonance with the agreement without due cause being shown. Velsicol reserves the right to cease construction should litigation from other parties be initiated.

We believe this voluntary move by Velsicol again demonstrates through action this company's commitment to environmental security. Since the possibility of contamination of drinking water was reported to Velsicol in October 1978, we believe the facts amply demonstrate that the company has acted in an unprecedented and expeditious manner to protect the well-being of the citizenry of Hardeman County.

Beyond any legal requirements in this matter, we would hope that the efforts of Velsicol and the subsequent success of these efforts would be examined closely by both other states and the federal government in the hope that similar joint company/government efforts can be applied to resolve similar problems in the future.

Sincerely,

John M Rademacher

John M. Rademacher

JMR/mmb 2-6

[illegible] CORPORATE AVENUE
SUITE [illegible]
MEMPHIS, TN [illegible]
[illegible]

August 12, 1982

AUG 23 1982

Ms. Kate Bouve
Office of Waste Program
  Enforcement (WH-527)
U.S. Environmental Protection
  Agency
401 M Street, S.W.
Washington, D.C. 20460

RE: Seymour Recycling Site

Dear Ms. Bouve:

This letter is with reference to your letter to Velsicol Chemical Corporation regarding the Seymour Recycling Site which we received on July 26.

Velsicol is certainly willing to discuss and review with Agency officials the information which leads the Agency to believe that Velsicol may be a generator of waste material sent to the Seymour Recycling facility. The only evidence we have been able to locate which indicates that Velsicol material was sent to Seymour is the attached November 24, 1975, invoice from our Chattanooga plant for 40,530 pounds of benzoic acid, a non-hazardous waste under CERCLA.

Sincerely,

VELSICOL CHEMICAL CORPORATION

August G. Stroecker

August G. Stroecker
Manager - RCRA/Superfund

AGG:sjs

Enclosure

cc: J. Rademacher
C. Hanson

[illegible] EAST OHIO STREET
CHICAGO, ILLINOIS 60611
[illegible]

JOHN M. RADEMACHER
VICE PRESIDENT—ENVIRONMENTAL
HEALTH AND REGULATORY AFFAIRS

November 24, 1982

Lawrence Kyte, Esquire
U.S. EPA - Region V
Office of the Regional Counsel
230 South Dearborn Street
16th Floor
Chicago, IL 60604

RE: U.S. vs. Seymour Recycling Corp., et al
IP-80-457-C (S.D. Ind.)

Dear Larry:

This letter is in response to your letter of November 5, 1982, to David B. Graham regarding the opportunity provided to Velsicol to accept an early cash-out settlement offer at the Seymour site.

As we explained to you, Bill Constantelos and Rich Bartel in our meeting on November 17, Velsicol was assured in agreeing to the Chem-Dyne settlement negotiated with U.S. EPA and the Justice Department that "double counting" of wastes at Chem-Dyne and at Seymour would not occur; i.e., once we signed the Settlement Agreement at Chem-Dyne and paid the settlement amount noted ($250,000 in the case of Velsicol plus the $170,000 previously spent for specific independent cleanup efforts by Velsicol almost a year earlier), we would not be billed for the same materials again. As we noted in our meeting with you, although we only had one of the waste shipment documents provided to Velsicol by EPA on November 9, 1982, with respect to the Seymour site (see below), we have been successful in matching the waste shipment documents from the Velsicol plants with the Chem-Dyne/Seymour trans-shipment documents. With the exception of the waste shipment documents attached hereto which indicate shipment directly to Seymour, our cross-checking confirms that Velsicol has already paid for this waste material by our settlement in Chem-Dyne, excluding for obvious reasons the Dow Chemical waste document and the Chem-Trol waste document amounting in total to 80,000 pounds of waste enclosed with our documents by the government. The waste shipping documents we used for cross-checking were supplied to the Justice Department on September 30, 1981, pursuant to a document exchange regarding the Chem-Dyne site at Hamilton, Ohio.

Once we received the U.S. EPA letter of July 26, 1982, with respect to the Seymour site, we responded to that letter on August 12, 1982, (see attachment). As noted in that letter, we were only able to locate a November 24, 1975, invoice to Seymour from our Chattanooga plant for 40,530 pounds of benzoic acid, a non-hazarous waste under CERCLA plus a weigh bill dated November 26, 1975, for 37,260 pounds of benzoyl chloride waste specifically destined to Seymour.

Therefore, although we accept no responsibility and deny any liability with respect to the Seymour site, we have accepted your settlement offer for an early cash-out by signing the attached Covenant Not To Sue and enclosed a check for $15,142 which represents that waste noted above for which Velsicol did not pay when we settled at Chem-Dyne.

Sincerely yours,

VELSICOL CHEMICAL CORPORATION

John M Rademacher

John M. Rademacher
Vice President, Environmental, Health,
and Regulatory Affairs

JMR:sjs

Attachments

WORLD HEADQUARTERS
341 EAST OHIO STREET
CHICAGO, ILLINOIS 60611
[illegible]

JOHN M. RADEMACHER
VICE PRESIDENT—ENVIRONMENTAL
HEALTH AND REGULATORY AFFAIRS

December 14, 1982

Ms. Rita Lavelle
Assistant Administrator of
 Solid Waste and Emergency Response
Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

RE: U.S. vs. Seymour Recycling Corporation, et al.
 IP-80-457-C (S.D. IND.)

Dear Ms. Lavelle:

On November 24, 1982, I forwarded an executed settlement document and a check in the amount of $15,142 to the Office of the Regional Counsel in response to the opportunity provided to Velsicol to accept an early cashout settlement offer at the Seymour site. In my correspondence (attached), and in a meeting with the Agency on November 17, 1982, we raised an issue of critical import concerning the Department of Justice's (DOJ) and Environmental Protection Agency's (EPA) settlement in the Seymour and Chem-Dyne matters -- the "double counting" of wastes attributable to these sites. (The specific facts regarding shipments of Velsicol materials directly attributable to the Seymour site and the rationale for the $15,142 check are set forth in detail in that correspondence and are not reiterated.) To date, we have received no response to our communications.

We have consistently taken the position that once we signed the Chem-Dyne settlement agreement and paid $250,000 (in addition to the $170,000. previously spent for specific independent cleanup efforts), we would not be required to pay for the cleanup of that material again. We had been assured by the DOJ and EPA that double counting of wastes between the two sites would not occur. Contrary to these assurances, the settlement offer provided to Velsicol on November 5, 1982, would require payment for cleanup of the very materials which were the subject of the Chem-Dyne agreement (with the exception of approximately 80,000 pounds of waste that originated from our Chattanooga plant and which were shipped directly to Seymour) as set forth in our November 24 letter. We find that position to be inappropriate in light of the inextricable link in operations and management of the two sites. Furthermore, that position is inequitable since it would require the company to pay twice to clean up the very same materials. We also note that the request is inconsistent with the settlement reached with all settling parties at the Seymour site, who have been "released" from further responsibility for materials at, to, from or near the site. That agreement appropriately addresses the double counting issue by affording the very protection Velsicol understood would be provided for settling generators in the Chem-Dyne matter. It would be highly inequitable to afford settling generators in the Seymour matter protection from double counting if their materials were later found to be at the Chem-Dyne site, but not to afford the same protection to Chem-Dyne settlers whose materials may be at Seymour.

As you are well aware, Velsicol has established a responsible track record of environmental compliance and has paid a fair share toward the cleanup of several disposal sites throughout the nation. We feel that the issue we have raised regarding the double counting of wastes between the Seymour and Chem-Dyne facilities bears upon the fair share settlement policy of the DOJ and EPA and urge you to resolve the issue along the lines we have presented. Should you desire to meet to discuss these issues in greater detail, we are available at your convenience.

Sincerely,

VELSICOL CHEMICAL CORPORATION

John M Rademacher

John M. Rademacher
Vice President, Environmental,
Health & Regulatory Affairs

JMR:sjs

Attachment

cc: Valdus Adamkus, EPA-Region V
Larry Kyte, EPA-Region V

WORLD HEADQUARTERS
341 EAST OHIO STREET
CHICAGO, ILLINOIS 60611
(312) 670-4500

February 28, 1983

Mr. Russel H. Wyer, Director
Hazardous Site Control Division
Office of Emergency and Remedial Response
((WH-548-E)
U.S. Environmental Protection Agency
Washington, D.C. 20460

Dear Mr. Wyer:

The purpose of this correspondence is to provide our official comments on the Superfund National Priority List as contained in the December 30, 1982 Federal Register, specifically concerning the inclusion of the Velsicol facility at Marshall, Illinois.

We strongly disagree with EPA's position that it will not take voluntary cleanup efforts which are underway or completed into account in determining which sites should be included on the NPL. The inclusion of such sites on the list needlessly creates concern and fear on the part of persons residing near such sites. It also effectively lumps together in the public's mind the owners and operators of such sites who have spent vast sums on cleanup, along with those who have done nothing.

If EPA does insist on including such sites on the NPL we suggest that sites be categorized as follows:

> Category 1: The orphan or uncontrolled sites on which no work has been done or planned. These sites should be rated in descending order on the basis of all data available.
>
> Category 2: Those sites on which control work is in the planning states and on which work is actually being performed (the Marshall facility would probably fall into this category).
>
> Category 3: Those sites which have had control work completed and are being monitored.
>
> Category 4: Those sites which have been delisted or have been controlled such that monitoring is not needed.

The listing of Velsicol's Marshall plant site illustrates the lack of need for listing sites where cleanup is underway. The Marshall site presents no risk to people or to the environment. From late 1978 to date, the following programs have been effected or are underway at Marshall. These efforts were coordinated with the Illinois EPA, specifically, Dr. Rauf Piskin, Land Pollution Control Division, IEPA Director - Michael Mauzy and later, Mr. Thomas Cavanaugh, Land Pollution Control Division. Region V, EPA, was informed of these efforts in a joint meeting on November 30, 1979, and that agency was told by Director Mauzy that the control program for the Marshall facility would be under his agency's control.

- Removal of approximately 4000 BBL's of hazardous materials from the plant site for either incineration at an approved facility or burial in a Class I landfill. All materials were shipped and disposed of under manifest procedures.
- Reinforcing dike structures on all impoundments and elevating them to assure adequate containment capacity for plant surface runoff.
- Environmental engineering assessment of plant and environs by AWARE, Inc. completed.
- Completed design of north storm water pond and intake structure.
- Environmental manager and staff reporting directly to corporate environmental management established at the plant site.
- Effectively responded to spill of storm water from hex ponds (August 1, 1979) with successful containment efforts effected on plant site and monitoring efforts to Wabash River. Worked with state response team.
- Hex ponds eliminated. Consolidated and stabilized in 5/6 pond.
- North storm water pond construction completed.
- Removal of loading/unloading dock trackage and berm down to clean clay along southern boundary of plant. Consolidated into 5/6 pond.
- Removal and disposal of all barrels, trash and boneyard equipment from 5/6 pond and adjacent surface.

- Cleanup and resurfacing of old 23 Acre trash disposal site.
- Dredge and muck out #2 and #4 ponds. Consolidated into 5/6 pond.
- Digging up contaminated soil and installing new drainage system for process wastes from chlordane unit.
- Shut down of resin unit operations. Elimination of air emissions from BF-3 unit.
- Paint and refurbish plant facilities.
- New lunchroom and separate clean/work clothes change room facilities installed to meet company standards.
- Stabilization tests started on 5/6 pond sludges.
- Consolidation and sectioning of 5/6 pond including levee improvements.
- Demolition of resin plant.
- SPCC for new railroad unloading dock area.
- SPCC for deep well injection tankage and pads.
- Completion of a detailed hydrogeologic study of plant and environs by Walker Wells. This was the fourth in a series spread over the past eight to ten years. Impact on groundwater demonstrated as minimal even in the shallow zone (0-15 ft.); none in the bedrock below that zone. With this evidence for a pond facility which has been in place for decades, the potential for expansion of even the minimal impact zone is nil particularly with the control programs being implemented. EPA's assessment was based upon very limited information from the 10 Williams & Works wells, which were located either in the wastes directly or immediately adjacent to the pond, whereas a total of 54 wells have been drilled (at present, 45 are now operable). Data from the Law Engineering report was included on the 1979 Velsicol submission but that data was evidently ignored. The Illinois State Geological Survey report and Walker Wells report were also not considered.
- Development of stabilization process for 5/6 pond sludge. IEPA issues permit for stabilization.
- Design of cap and monitoring program essentially complete.
- Secure approval of IEPA for closure of site.

- Submitted an updated parallel request for a solid waste management permit to close the inactive 5/6 pond site from IEPA. The request includes a capping program for the 5/6 pond and monitoring wells along with a triggering protocol for installation and operation of a leachate collection system should that become necessary. This multi-million dollar program is scheduled to be completed by the end of the 1984 construction year.

- All process waste waters and storm waters are contained on site and disposed of in an approved deep well disposal system. There are no observed waste releases either to the surface or ground waters. (The HRS scores should beadjusted to zero.)

- With the 50-year history of operation available, there is absolutely no evidence of potential impact upon the public water supply aquifer used by the City of Marshall. The Marshall water supply aquifer is associated with the Big Creek geology which has a flow to the east. On the other hand, the aquifers at the Velsicol plant site dip to and flow westward with no demonstrated interconnection or potential for same with the City of Marshall water supply aquifer. The Walker Wells report demonstrates the limited impact the facility has upon the groundwater regimen in the area. Further, all residences located to the west of the plant site for a distance of over three miles are served by the City of Marshall public water supply. In fact, the plant site is surrounded by the Marshall City water service. Finally, any private water supply further west of the plant would be located beyond Mill Creek which provides an effective interception barrier to the aquifer in question. (The HRS score for these uses should also be zero.)

- No surface or groundwater uses are either threatened or impaired, since there are no discharges. (The HRS scores should be adjusted to zero.)

At the Marshall plant and in all of its operations, Velsicol has committed to a program of environmental security and has taken and will continue to take the necessary steps to insure full compliance with that program.

Sincerely,

John M Rademacher

J. M. Rademacher
Vice President, Environmental,
Health & Regulatory Affairs

WORLD HEADQUARTERS
341 EAST OHIO STREET
CHICAGO, ILLINOIS 60611
(312) 670-4500

February 28, 1983

Mr. Russell H. Wyer, Director
Hazardous Site Control Division
Office of Emergency and Remedial Response
(WH-548-E)
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Dear Mr. Wyer:

This letter is in response to the request by the United States Environmental Protection Agency ("EPA") for comments regarding the sites listed on the proposed National Priorities List ("NPL"). 47 Fed. Reg. 58476 (Dec. 30, 1982). We will address herein the listing of the site designated Toone, Tennessee, Velsicol Chemical Corporation (hereinafter "Toone site").

Our comments are in three parts. First, we disagree with EPA's position that remedial action or "response actions" at the site location should not be considered in the listing and ranking process. Second, in response to EPA's invitation for information about inaccuracies in site scores (47 Fed. Reg. 58479), we have discovered that a substantial mistake was made in the site scoring of the Toone site. If our calculations are correct, the Toone site should not have been included on the proposed NPL. Third, even accepting the mistaken site scoring, we explain why the Toone site should be deleted from the NPL (or its ranking reduced dramatically), based on the EPA's own criteria for deletion.

I. The Toone Site

The Toone site is a 270 acre former farm plot located in Hardeman County, Tennessee, a sparsely populated, rural area in the southwest sector of the state. A minor portion of the farm was used by Velsicol as a chemical waste landfill from 1964 until 1973. In late 1977, some of the few local residents who rely on wells which tap the local aquifer complained about chemical odors and tastes in their drinking water. In mid-1978, carbon tetrachloride and chloroform were detected in samples taken from these wells. Velsicol proceeded immediately to provide local residents with a temporary water supply and began the installation of a permanent alternate water supply for all affected persons. Velsicol replaced all residential plumbing, household appliances, and kitchen/dining/hygiene utensils and implements.

The permanent alternate water supply was put in place by 1979. Shortly thereafter, Velsicol installed a clay cap on the former disposal site, with appropriate monitoring devices, to prevent migration of contaminants from the site either by surface movement or by further movement to the local aquifer. No person has been exposed to water from the local aquifer since mid-1978.

II. The Failure To Consider Response Actions Is Unreasonable And Is Inconsistent With CERCLA

The Hardeman facility is on the proposed NPL because Tennessee officials scored it as if the local ground water aquifer were still used for drinking water by a population of 1,000 to 3,000 persons, even though, as noted, the aquifer is not now used for drinking water by anyone.[1/] This method of scoring is apparently required by EPA policy, as set forth in the following preamble to the NPL, 47 Fed. Reg. 58477 (Dec. 30, 1982):

> Sites were scored for inclusion in the NPL on the basis of the hazards that existed before any response actions were initiated. Public agencies might have been discouraged from taking early response if such actions could lower the Hazard Ranking System score and prevent a site from being included on the NPL. In addition, where response actions have already been initiated by private parties or another agency, listing such sites will enable EPA to evaluate the need for a more complete response . . .

To reassure companies that scored high under this system, EPA added: "Inclusion on the NPL is a point of departure for further investigation. It does not establish that a particular response is appropriate, nor does it constitute a judgment concerning the responsibilities of owners or operators." 47 Fed. Reg. 58479.

Nevertheless, and notwithstanding EPA's assurances, we disagree with EPA's decision not to factor in the numerous remedial actions which in Toone's case have made the site environmentally secure and have resulted in the elimination of any possibility of future exposure. Under Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, et seq. (1981 Supp.) ("CERCLA" or "the Act") Congress required the NPL to be prepared as follows:

[1/] We will address below the effect on scoring of the inaccurate assumption that the aquifer once served 1,000-to-3,000 persons.

> . . . (The criteria for listing) shall include at a minimum:
>
> * * *
>
> Criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action. Criteria and priorities under this paragraph shall be based upon relative risk or danger to public health or welfare or the environment, in the judgment of the President, taking into account to the extent possible the population at risk, the hazard potential of the hazardous substances at such facilities, the potential for contamination of drinking water supplies, the potential for direct human contact, the potential for destruction of sensitive eco-systems, State preparedness to assume State costs and responsibilities, and other appropriate factors.

42 U.S.C. Section 9605(8)(A).

This provision shows unequivocally that, contrary to EPA's stated policy or ignoring remedial action, Congress wanted a list of hazardous waste site candidates most appropriate for "taking remedial action." To score a site as EPA has scored Toone -- as though it is a much greater risk today than it actually is -- does not comport with the congressional purpose.

Even accepting EPA's policy that it may be appropriate to consider is compiling the priority list the hazards which existed in the past at a site, that is a wholly different matter than treating the past as if it is the present. In the case of Toone, for example, if even minimal credit had been given for the extensive remedial actions already taken there, the site would be placed substantially lower on the proposed NPL than it presently stands.

III. The Score Of 30 To Characterize the Exposed Population Is Based On Mistaken Facts.

The score of 30 the site received to characterize the exposed population was derived from matching a value representing distance to the nearest well (value of 4) with a value representing the population served (value of 3) on a matrix table contained at 47 Fed. Reg. 31231 (July 16, 1982). Each of those values was based on conditions that existed before response actions, including the installation of a permanent alternate water supply, were undertaken to avoid risk to the exposed population. EPA's failure to consider the real facts is, as we have stated earlier, contrary to Section 105 of CERCLA.

However, even assuming EPA's disregard of remedial actions is not improper, the value of 3 representing the "population served" is simply mistaken. This value is based on the factual predicate that 1,000-to-3,000 persons were once served by ground water wells drawing water from the aquifer of concern. In fact, there were never more than approximately fifty persons who drew water from this aquifer.[2] The Federal Register Notice explaining how to compute the population served by ground water is clear that, "people . . . who do not use water from the aquifer of concern are not to be counted." 47 *Fed*. *Reg*. 31233 (July 16, 1982). Likewise, tourists and transient visitors to the area are not be be counted. *Id*.

For purposes of determining whether or not Velsicol should be listed on the priority site list, the difference between whether the exposed population consists of 50 or 3,000 persons is critical. If 1,000-to-3,000 people had been served by the aquifer, then EPA's score of 3 for "exposed population" would have been correct. However, since only 1-to-100 people were ever served by this aquifer, the appropriate score should be 1, not 3. See 47 *Fed*. *Reg*. 31233 (July 16, 1982).

When the value of 1 is matched with 4 (representing distance to the nearest well) on the matrix table at 47 *Fed*. *Reg*. 31231, the score for exposed population is 10 rather than 30. When 10 is used to compute the ground water route score (*see* Toone worksheet Figure 1), that score changes from 79.59 to 39. Similarly, when 39 is used to compute S_M (*see* Toone worksheet Figure 10), S_M changes from 47.71 to 25.83. According to EPA, any site that scored lower than 28.5 was not placed on the priority list. 47 *Fed*. *Reg*. 58477 (Dec. 30, 1982). Thus, the Toone site, with a corrected score of 25.83, should not be on the priority site list. On this basis, we hereby reuqest EPA to remove the Toone site from the final NPL.

2/ In a private damages suit involving the Toone site, Sterling v. Velsicol, Civ. No. 78-1100 (W.D. Tenn., Dec. 8, 1978), plaintiffs' experts on the hydrologic conditions of the area testified recently that the local groundwater aquifer has its head waters and outcrops at known locations which define the aquifers' boundaries. Thus, by virtue of the known boundaries of the aquifer, the wells which draw from it may be identified with precision. See testimony of Drs. Papadopoulos and Larson. See testimony of Dr. Papadopoulos tr. 1843-57; Dr. Larson, tr. 1858-1955; and plaintiffs' Exhibit 183.

IV. The Toone Site Meets or Exceeds The Criteria For Deletion From the NPL

We believe the Toone Site meets EPA's criteria for deletion from the NPL cited at 47 Fed. Reg. 584679:

> 1) EPA in consultation with the State has determined that responsible parties have completed cleanup so that no Fund-financed response will be required . . .
>
> or
>
> 2) EPA in considering the nature and severity of the problems, the potential costs of cleanups, and available funds, has determined that no remedial actions should be undertaken at the site.[3]

With respect to the first criterion, we believe the State will agree that the cleanup of the Toone site has been completed pending the completion of a thus far highly successful monitoring program later this year. Thereafter, the complete elimination of exposure to drinking water and the otherwise virtually secure environment at the site will not be disputed by the State. Thus, a sound basis exists for EPA to conclude that the cleanup is complete and that no Fund-financed response will be required.

With respect to the second criterion, we understand the State's position to be that the Toone site presents no current danger or threat of future endangerment to the public health or welfare.[4] We have no indication that EPA disputes the State's position in this regard. Thus, since the second criterion requires the balancing of the costs of further remedial actions against the benefits to be derived therefrom (at the same time considering the limitation on available funds), we believe a sound basis exists for EPA to determine that no further remedial actions should be undertaken at the site.

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[3] Although these determinations would ordinarily be made by EPA after publication of the final NPL and completion of an investigation and site feasibility study, EPA has not barred deletion of a site from the NPL at an earlier stage. Where, as here, a site has already received thorough study, the issues are ready for decision.

[4] In Sterling v. Velsicol supra, the Assistant Director of the Division of Solid Waste Management, Tennessee Department of Public Health, Mr. J. M. Apple, testified that the NPL listing of the Toone site does not indicate that the state has determined the site to pose an imminent health hazard. Testimony of J. M. Apple, tr. 4095, 4100.

Conclusion

EPA's policy not to consider remedial actions in listing and priority ranking of sites on the proposed NPL is contrary to CERCLA. Even accepting EPA's policy, however, EPA's scoring for the Toone site contains a mistake which justifies deletion from the final NPL. Finally, we believe the Toone site qualifies now under either of EPA's stated criteria for deletion from the NPL.

For all of the foregoing reasons, we believe the Toone site should be delisted (or its ranking substantially reduced) on the final NPL. We would be pleased to discuss our comments with you or with the State of Tennessee, or to provide further comments or information, at any time. We would be happy to supply you with our documentation of any of the points made in this letter.

Very truly yours,

John M Rademacher

J. M. Rademacher
Vice President, Environmental,
Health & Regulatory Affairs

cc: Dr. M. T. Bruner
Tenn. State Dept. of Health

Region IV, EPA -
Reg. Admin. - C. Jeter

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February 28, 1983

Mr. Russel H. Wyer, Director
Hazardous Site Control Division
Office of Emergency and Remedial Response
(WH-548-E)
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Dear Mr. Wyer:

These are the official comments from Velsicol Chemical Corporation relative to the listing of the Gratiot County Golf Course site (HRS rating 40.12), St. Louis, Michigan, on the Superfund National Priority List as contained in the December 30, 1982, Federal Register.

- On or about January 4, 1982, Velsicol Chemical Corporation received the signed agreement between Velsicol, the Michigan Department of Natural Resources, the U.S. EPA and the U.S. Department of Justice to effect an agreed upon control program for the Golf Course site.
- On January 6, 1982, Velsicol's contractor initiated a $2 million dollar program involving unprecedented winter time removal of some 77,000 cubic yards of contaminated soils from the Golf Course site and transferred them to the old Michigan Chemical Plant site where they were incorporated under the working cap of that site. This program was under strict health and hygiene, air monitoring and neighborhood impact protocols which minimized exposure to workers and people in the community alike. The transfer was completed by late February and the recontouring and addition of clay and soil to the Golf Course site were completed by mid-April 1982.
- State and federal inspections confirmed satisfactory completion of the work.
- Full releases were agreed to and given by the state of Michigan, the U.S. EPA and the U.S. Department of Justice. These were reconfirmed in the consent decree signed by all parties and entered into federal court on December 27, 1982.

The above facts can be easily confirmed by your office with Dr. Frank Biros and Mr. Fred Stiehl, the Region V Office or the Department of Justice.

Since the control program for this site was completed by Velsicol last year, no residual problem remains, and no monitoring was programmed or required by state and federal authorities. Velsicol Chemical Corporation requests that this site be deleted from the final listing to be published by EPA, even if EPA persists in its view that it will list sites at which cleanup efforts are underway.

Sincerely,

John M Rademacher
J. M. Rademacher
Vice President, Environmental,
Health & Regulatory Affairs

cc: DNR-Michigan, ATTN: Jack Bails
Region V-EPA, ATTN: B. Constantelos